THE UNITED STATES AND THE WORLD COURT

BY PHILIP C. JESSUP

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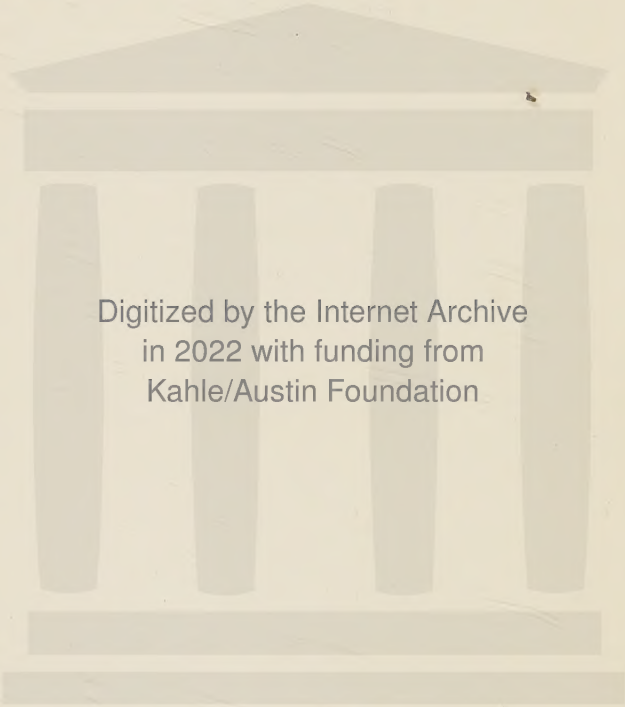
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THE UNITED STATES

AND THE

WORLD COURT

By PHILIP C. JESSUP

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WORLD PEACE FOUNDATION PAMPHLETS
40 MT. VERNON STREET, BOSTON
VOL. XII 1929 NO. 4

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Boston, Massachusetts

FOREWORD

This book states intelligently and accurately the international proceedings following the resolution of January 27, 1926, by which the Senate consented upon certain conditions in the form of reservations, that the United States should adhere to the protocol or treaty, creating the Permanent Court of International Justice.

Professor Jessup is specially qualified to write such an account for he took part in much that was done and he understands the meaning and effect of the events which he describes. He shows how the principal States already supporting the Court have reached a willingness to accept all the Senate reservations in full, accompanied by a practical working agreement providing for the application of the reservations to concrete cases as they arise, in such a way as to avoid interference with current business in which the United States is not concerned. The book carefully confines itself to the explanation of facts without arguing about them.

To appreciate the full significance of the facts the reader must remember that all the apparently dry details are inevitable parts of a very great movement in human progress. Long before our time many sensible people began to think that as the private wars of former centuries had been in a great measure done away with by the establishment of Courts to decide personal controversies, just so public wars between civilized nations in an equal measure might be done away with by the establishment of International Courts to decide international controversies.

Very gradually, through many years, by an almost infinite number of small advances, that idea has established itself in the minds of men practically concerned in international affairs. The distinguished and universally

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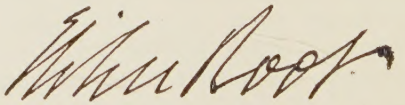
acknowledged success of the Permanent Court of International Justice now sitting at the Hague proves that the idea was sound and that civilization has found a great new instrument for the maintenance of peace with justice. First was the dream and then the hope and then the practical policy and now is the test of the policy. America was long the foremost advocate of this great experiment. American idealism is for it. All the Presidents of the United States for more than thirty years, that is to say, all the men specially charged with the practical conduct of the foreign affairs of the United States, have been expressly and publicly for it. The House of Representatives, whose action would be required to appropriate our proportional contribution to the expense of the Court, has declared itself by formal resolution in favor of our adhesion. The Senate has advised and consented to adhesion upon five conditions designed to protect American interests. All the principal powers now in the Court are ready to accept all those conditions of the Senate.

Nothing remains but the question whether in the practical working arrangements proposed for giving effect to the Senate resolutions there is anything that so imperils the interests of the United States as to prevent the execution of a major public policy of the United States. To the study of that question this history should be a valuable contribution.



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THE UNITED STATES AND THE WORLD COURT

THE PROBLEM OF AMERICAN ACCESSION AND THE REVISION OF THE STATUTE

By Philip C. Jessup

I. FROM SENATE RESERVATIONS TO ROOT PLAN

On January 27, 1926, some three years after President Harding had asked the Senate to advise and consent to the accession by the United States to the Protocol of Signature of the Permanent Court of International Justice, the Senate, by a vote of 77 to 16, adopted a resolution agreeing to that proposal, subject to five reservations and three additional qualifications. This Senatorial action followed a long period of discussion throughout the country and the indorsement of the World Court by two Presidents and by a large majority of the House of Representatives.[1]

One of the qualifications or conditions which the Senate included in its resolution was to the effect that the President, prior to signing the Protocol of Signature of the

[1] For the original submission to the Senate, the Resolution of the House of Representatives of March 3, 1925, and the Senate's resolution of January 27, 1926, see Hudson, *The World Court, 1922–1929*. Revised edition. World Peace Foundation, p. 158–168 (hereinafter cited simply as Hudson, *World Court*). See *infra*, p. 128 [768] for the Senate resolution.

Court, must secure the acceptance of the five reservations through an exchange of notes with the states already signatory to that Protocol. It might well be argued that this provision was an infringement upon the Executive's constitutional power to conduct the foreign relations of the United States, since it prescribed the method of conducting those relations. Nevertheless, Secretary of State Kellogg proceeded to write notes to all of the Signatory States and to the Secretary-General of the League of Nations, stating the terms of the five reservations. This action in itself served to emphasize the two different methods of conducting diplomatic affairs of general interest which are now followed in various parts of the world.[1]

Since the inauguration of the League of Nations, the Members have become accustomed to carrying on matters of common concern by joint conference, whereas the United States is still inclined to follow the ancient method of negotiation through foreign offices and diplomatic representatives. In line with their new, but already well-established practice, and because of their common interest in the matter, the Signatory States were not prepared to accept the Senate's reservations by a mere exchange of notes. On more technical grounds, it was also felt that, since the reservations would effectuate certain amendments in the Statute of the Court, and since this Statute was brought into being by a treaty which had been ratified by the various states, the more appropriate procedure would be to conclude an additional treaty by which the reservations could be given effect and the Statute amended accordingly. Thus, only five states sent unconditional acceptances of the reservations in reply to Secretary Kellogg's note.[2]

[1] This distinction was well pointed out by Elihu Root in his speech of acceptance of the Woodrow Wilson Memorial Award on December 28, 1926; see also *Committee of Jurists on the Statute of the Permanent Court of International Justice. Minutes of the Session held at Geneva, March 11–19, 1929*, p. 16 (C. 166. M. 66. 1929. V. 5). This document is hereinafter cited as *Minutes*.

[2] See Hudson, *op. cit.*, p. 185–186, for a table (taken from the *Fourth Annual Report of the Permanent Court of International Justice*, p. 126 (Series E, No. 4), indicating the replies from the various Governments.

At a meeting of the Council of the League of Nations, held at Geneva on March 18, 1926, Sir Austen Chamberlain (British Empire) suggested the points indicated above, and proposed that the Governments of the Signatory States and the Government of the United States should appoint delegates to attend a conference to be held in Geneva on September 1, 1926, for the purpose of discussing the whole question.[1] Sir Austen Chamberlain also indicated that certain parts of the Senate's reservations were not wholly clear, and that their correct interpretation required discussion with the United States.

The United States was duly invited on March 29, 1926, through a letter from the Secretary-General of the League, to attend the Conference of Signatories.[2] Secretary Kellogg, however, declined the invitation on the ground that he had no authority to vary the procedure laid down by the Senate, and on the further ground that the reservations were "plain and unequivocal." [3]

In spite of this position on the part of the United States, the Signatory States held their conference in Geneva during September, 1926. They were naturally hampered in their deliberations by the absence of an American representative, but they endeavored to ascertain the exact meaning of the reservations by reference to the debates in the Senate. Their conclusions were embodied in a Final Act and a Preliminary Draft of a Protocol. This Final Act and Draft of a Protocol were not communicated to the United States as such but, in accordance with the decision of the Conference, they formed the basis of replies sent by 24 different states in answering Mr. Kellogg's note of March 2, 1926. These replies, based on the conclusions of the conference, indicated that all of the reservations except the latter part of the fifth were acceptable to the other states, although with regard to some provisions it was suggested that the United States would find satis-

[1] See Hudson, *op. cit.*, p. 173, for pertinent text of extract from the Minutes of the Council.

[2] See *ibid.*, p. 172, for text of the invitation.

[3] See *ibid.*, p. 174, and *Minutes*, p. 98, for text of Mr. Kellogg's note.

faction for its desires in action already taken by the Court, and that formal acceptance of parts of the reservations would therefore be unnecessary.

The United States Government took no further official action until February 19, 1929, about two and a half years after it had been advised of the views of the other states. Nevertheless, certain interesting events occurred in the United States prior to that time. On December 7, 1926, Senator Trammell of Florida introduced in the Senate a resolution providing for the rescission of the Senate's resolution of January 27, 1926, on the ground that "a very large majority of the powers signatory to such protocol have not indicated their acceptance of it." This resolution was never even reported out of the Foreign Relations Committee, and on February 9, 1927, its sponsor's motion for consideration on the floor was tabled by a vote of 59 to 10.[1] On February 6, 1928, Senator Gillett introduced a resolution in accordance with which the Senate would respectfully suggest to the President "the advisability of a further exchange of views with the signatory states in order to establish whether the differences between the United States and the signatory states can be satisfactorily adjusted." An agreement was reached to take action on this resolution in the Foreign Relations Committee on December 5, 1928, but some 10 days before that date President Coolidge announced to a group of Senators breakfasting at the White House that he planned to resume negotiations in the Court matter. Senator Gillett accordingly announced that he would let the resolution lie over.[2] Secretary Kellogg's note of February 19, 1929, already referred to, seems to have been the outcome of this presidential declaration.

The Conference of Signatories in September, 1926, had

[1] Sen. Res. 282, 69th Cong., 2d sess., *Cong. Rec.*, Vol. 68, p. 37, 119, 3228, 3327; see Quincy Wright, "The Permanent Court of International Justice: the United States and the Court," *International Conciliation Pamphlet*, No. 232, September, 1927, p. 360 [40].

[2] Sen. Res. 139, 70th Cong., 1st sess. See The American Foundation, *The World Court*, fifth edition, April, 1929, p. 52.

suggested the desirability of a further exchange of views, and Mr. Kellogg's last letter stated that the Government of the United States felt that such an informal exchange of views as was contemplated would "lead to agreement upon some provision which in unobjectionable form would protect the rights and interests of the United States as an adherent to the Court Statute." [1]

Meanwhile certain other pertinent events had occurred. On September 20, 1928, the Assembly of the League adopted a resolution suggesting to the Council that it would be desirable to examine the Statute of the Court with a view to making such amendments as the experience of eight years of operation might indicate were desirable. The resolution pointed out that since a new election of the entire bench of the Court was to be held in September, 1930, in accordance with the Statute, the time was particularly appropriate for such an examination and possible revision. Acting upon this resolution, the Council, on December 13 and 14, 1928, decided to appoint a committee of experts to undertake the work in question. In addition to the other members of the committee, Elihu Root was invited to serve, and he accepted the invitation.[2] The committee members were selected as individual experts and not as governmental representatives, and the committee was accordingly of a character analogous to that which framed the original Statute of the Court in 1920; Mr. Root was also a member of that original committee.

Secretary Kellogg's note of February 19, 1929, was sent out while Mr. Root was en route to Geneva to attend the committee sessions. The note was transmitted to the Secretary-General of the League, as well as to the Signatory States. It thus came before the Council of the League at its meeting in Geneva on March 9, 1929. At that session the Council unanimously, and with a considerable show of friendliness toward the United States, adopted a resolution charging the Committee of Jurists to consider the whole

[1] See Hudson, *op. cit.*, p. 188, 190.

[2] For the Assembly and Council action, see the report of the Committee of Jurists, *infra*, p. 140 [780].

question of the accession of the United States to the Court, in addition to its primary function of considering the revision of the Statute.[1] The members of the Council, in stating their approval of the resolution, referred to the happy circumstance that Mr. Root had accepted the invitation to serve on this committee and that his cooperation might be expected to lead to a satisfactory solution of the outstanding difficulties regarding the accession of the United States to the Court.[2]

Before leaving the United States, Mr. Root had consulted Secretary Kellogg and certain members of the Senate. Although he was going to Geneva as a private citizen to attend a meeting of a committee which at that time was charged only with the task of amendments to the Statute and not with the consideration of American accession, it was quite natural, in view of his connection with the earlier history of the Court and his previous service as Secretary of State and as Senator, that the question of his own country's participation in the work of the Court should be prominent in his mind. He had already roughly formulated a plan for the solution of the existing difficulty and this plan he discussed with the official persons whom he saw in Washington. The plan seemed to them acceptable in principle, but no definitive text was in existence at that time to which they could give final approval. Mr. Root arrived in Geneva several days before the committee began its sessions, but while the Council of the League was meeting. In informal conversations with various statesmen who were serving as members of the Council, the question of American accession was discussed. By this time Mr. Root's plan had taken definite written form and the various persons consulted seemed to find it acceptable in principle.

Accordingly, when the committee met on March 11, the chairman immediately asked Mr. Root to submit to the

[1] See Hudson, *op. cit.*, p. 191, for the text of the Council's resolution, reprinting League of Nations, *Official Journal*, X, p. 564.

[2] *Official Journal*, X, p. 564.

committee the informal project which he had prepared.[1] This draft project immediately became the basis for discussion in the committee. It dealt only with the chief controversial point, namely, the second part of the fifth reservation. As a result of the discussion, four other members of the committee, M. Fromageot, Sir Cecil Hurst, M. Pilotti and M. Politis, submitted redrafts.[2] Other members of the committee made further oral suggestions. Mr. Root's original draft had been purely temporary in its form and was designed to explain the proposed arrangement without attempting to give it final form. Accordingly, to Mr. Root and to a majority of the other members of the committee, the redraft prepared by Sir Cecil Hurst appeared to be the most satisfactory basis for further discussion and it was accepted as such. The chairman appointed a subcommittee consisting of himself, Mr. Root, Sir Cecil Hurst and M. Politis, for the preliminary study of this draft. For this subcommittee, M. Politis reported a substantial agreement on the draft, subject to certain further modifications.[3] The matter was then discussed further in full committee and then referred to Sir Cecil Hurst and to Mr. Root for final redaction.[4] The committee then turned its attention to the other item on its agenda, that is, the revision of the Statute, and it was not until the 12th session, on the 18th of March, that the revised Root draft was again considered by the full committee.[5] After some discussion, the revised draft was unanimously adopted, together with the accompanying report of Sir Cecil Hurst. It should be noted, however, that the Draft Protocol which was thus finally accepted dealt with the

[1] The committee was composed of the following: Vittorio Scialoja, chairman; W. J. M. van Eysinga, vice-chairman; Henri Fromageot, Friedrich Gaus, Sir Cecil J. V. Hurst, Nobumi Ito, Massimo Pilotti, Nicolas Politis, Arnold Raestad, Elihu Root, Szymon Rundstein and Francisco J. Urrutia. The committee was also assisted by Stefan Osusky, chairman of the Supervisory Commission, and by Dionisio Anzilotti and Max Huber, the President and Vice-President of the Court.

[2] Root, *Minutes*, p. 9, and also Appendix, *infra*, p. 138 [778]; *Minutes*, Fromageot, p. 81; Hurst, p. 16; Pilotti, p. 10; Politis, p. 21.

[3] See *Minutes*, p. 22.

[4] *Loc. cit.*

[5] See *Minutes*, p. 76.

whole question of American accession and not solely with the latter part of the fifth reservation as did the original draft. This development was in accordance with Mr. Root's original plan, and followed upon his suggestion. The final Draft Protocol is based upon the Preliminary Draft of a Protocol which was incorporated in the Final Act of the Conference of Signatories of September, 1926.

According to the report of Sir Cecil Hurst, as adopted by the committee, this Draft Protocol was to be transmitted to the Council, which had appointed the committee. The report suggested to the Council that, if it approved the protocol, the text should be communicated to the Government of the United States by the Secretary-General of the League as a reply to Secretary Kellogg's note of February 19, 1929. It was further suggested that it should at the same time be communicated to all the Signatory States. Furthermore, since the proposal for the appointment of the committee originated in the Assembly, it was suggested that the Draft Protocol should also be communicated to that body for such action as might be deemed appropriate. Since the Draft Protocol would eventually take the form of a treaty requiring the ratification of the United States and of the various states which had already adhered to the Court, it was suggested that a further special conference might be called for the fall of 1929 in order that delegates of the various states might affix their signatures at that time.[1]

Similar action was taken with regard to the proposed amendments to the Statute.[2]

The reports on both subjects were transmitted to the Council and considered by it at its session in Madrid on June 11. M. Scialoja of Italy, who had presided over the Committee of Jurists, acted as rapporteur for the Council and submitted separate reports and draft resolutions on the subject of the accession of the United States and on the amendments to the Statute.

[1] See the Committee Report, p. 144 [784].

[2] These proposals will be considered in detail later, *infra*, p. 59 [699].

The report on the accession of the United States [1] merely follows that of Sir Cecil Hurst, pointing out that immediate transmission to the Governments of the United States and of the several Signatory States would afford them time for study of the question before the Assembly was called upon to pronounce upon the matter at its next session in September. The draft resolution accordingly provides that the Council adopts the report and Draft Protocol submitted by the Committee of Jurists and instructs the Secretary-General to communicate them to the United States in reply to Mr. Kellogg's note of February 19, 1929, and to the Signatory States. The resolution further instructs the Secretary-General to transmit these documents to the Assembly and to place the question on its agenda since the Assembly, like the Council, is "a body whose procedure in regard to the method of seeking advisory opinions from the Court would be affected by the adoption" of the proposed protocol. Since there has hitherto been some criticism in the United States of action by the League with reference to the Court, it seems desirable to call special attention to this sound reason for referring to the Assembly the protocol dealing with American accession.

M. Scialoja's report on amendments to the Statute also follows closely that of the Committee of Jurists, but suggests a somewhat different procedure. Sir Cecil Hurst's report on the accession of the United States had noted the possibility of the Council's convening a second conference of the Signatory States; the Committee of Jurists' report on amendments to the Statute had not included such a suggestion. Nevertheless, M. Scialoja recommended to the Council the calling of such a conference to consider the amendments to the Statute, but not to discuss the protocol for American accession. M. Scialoja felt that, though the Assembly had asked that proposals be submitted to it, the Council would be correctly interpreting the Assembly's wishes if it convoked a conference of the

[1] League of Nations Document, C. 275. 1929. V; Appendix, p. 146 [786].

states parties to the Statute to meet simultaneously with the Assembly. The two bodies might then consult together as necessary.

At the same time the Supervisory Commission might be asked to examine and report to the Assembly on the financial proposals contained in the committee's report. M. Osusky, chairman of the Supervisory Commission, had assisted the Committee of Jurists in an advisory capacity. It will be recalled that under Art. 32 of the Court Statute, it is the Assembly which, on the proposal of the Court, fixes the salaries, allowances and pensions of the judges. M. Scialoja's draft resolution contains provisions appropriate to the ends stated.

It may be noted that the Secretary-General was instructed to communicate the report of the Committee of Jurists to the Members of the League and to the states mentioned in the Annex to the Covenant — which includes the United States — but that the conference was to be only of "states parties to the Statute of the Permanent Court of International Justice." These resolutions were adopted by the Council at its session on June 12.[1]

On August 31, during its 56th session, the Council adopted a resolution inviting the Conference of Signatory States to consider the subject of the accession of the United States in addition to its consideration of the proposed Amendments to the Statute.[2] This action of the Council was subsequent to, and probably the result of, a communication from the American Government which will be described shortly. On September 3 the Council's resolution was considered by the First Committee of the Assembly, which reached the conclusion that this question should be considered by the conference before it was taken up by the Assembly. This procedure was unanimously adopted by the Assembly on the same day.[3]

The conference began its sessions on September 4 and

[1] League Doc. C. 274. 1929. V; Appendix, p. 122 [762].

[2] League Doc. A. 28. 1929. V. 14.

[3] *Verbatim Record of the Tenth Ordinary Session of the Assembly*, Third Plenary Meeting, September 3, p. 1.

appointed as Chairman Jonkheer van Eysinga of Holland, who had occupied a like position in the 1926 conference and who had served as vice-chairman of the Committee of Jurists in March, 1929. At its second meeting, on the afternoon of the same day, the conference unanimously adopted the draft protocol for the accession of the United States which had been prepared by the Committee of Jurists.[1] The draft protocol was accordingly referred by the conference to the Assembly, with the recommendation that it be referred to the First Committee;[2] this recommendation was followed by the Assembly. At the private first meeting of the conference, held in the morning, the Secretary-General of the League informed the delegates that he was reliably informed that the draft protocol was considered satisfactory by the Secretary of State of the United States, but that no official notice on the matter could yet be given out. At the public session in the afternoon, Sir Cecil Hurst, the British delegate to the conference, referred to "the very gratifying communication" made in the morning, which in his opinion made it clear that "the Government most interested in the question is prepared to accept the scheme as it is laid before this conference."[3] The official confirmation of this American approval was made by the Department of State on the same day. It was announced that on August 14 Hugh R. Wilson, American minister to Switzerland, had by instruction from Washington delivered an *aide mémoire* to the Secretary-General. This communication acknowledged the transmission of various documents relating to the draft protocol for American accession. It then proceeded with the statement "that after careful examination the Secretary of State considers that the said draft protocol would effectively meet the objections represented in the reservations of the United States and would constitute a satis-

[1] *Journal of the Tenth Assembly*, September 5, 1929, No. 4, p. 47; text of protocol in Appendix, p. 156 [796].

[2] *Report of First Committee*, League Doc. A. 49. 1929. V. 15; *infra*, p. 150 [790].

[3] New York *Times*, September 5, 1929, page 1.

factory basis for the adherence of the United States to the protocol and statute of the Permanent Court of International Justice, dated December 16, 1920, and that after the draft protocol has been accepted by the States Signatory to the Protocol of Signature and the Statute of the Permanent Court, he will request the President of the United States for the requisite authority to sign and will recommend that it be submitted to the Senate for its consent to ratification." [1]

The Protocol for American Accession was approved without any dissenting voice on September 14 by the Assembly, and was promptly signed by the following 49 states:

Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Estonia, Finland, France, Germany, Great Britain, Greece, Guatemala, Haiti, Hungary, India, Irish Free State, Italy, Japan, Latvia, Liberia, Luxemburg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, Rumania, Salvador, Serb-Croat-Slovene State, Siam, South Africa, Spain, Sweden, Switzerland, Uruguay, Venezuela.

The Acceptance of the Senate Reservations

Having noted the various events which have transpired since the Senate adopted its resolution on January 27, 1926, it may be convenient to consider *seriatim* and in detail the Senate reservations and the various steps which have been taken with regard to each one. This would seem to be particularly desirable, since the so-called Root Plan or Draft Protocol recommended by the Committee of Jurists opens with a statement that "the states signatories of the said protocol [of the Permanent Court of International Justice] accept the special conditions attached by the United States in the five reservations mentioned above

[1] Department of State, Press Release, September 5, 1929; *infra*, p. 148 [788].

[in the preamble], to its adherence to the said protocol upon the terms and conditions set out in the following articles." [1] The question in the United States, therefore, is whether the terms and conditions laid down by the Senate have been accepted by the states signatory to the Court Protocol.[2] It would seem that the answer to this question can be most easily ascertained by such a separate examination of the reservations.[3]

[1] Art. 1 of the Draft Protocol, *infra*, p. 156 [796].

[2] As noted *supra*, p. 11 [651], Secretary of State Stimson has already indicated his opinion that this question should be answered in the affirmative.

[3] This method has been followed by Professor Hudson, "The American Reservations and the Permanent Court of International Justice," 22 *American Journal of International Law* (1928), p. 1 *et seq.* (hereinafter cited as "Hudson, *American Reservations.*")

II. NEGOTIATIONS ON THE RESERVATIONS

First Reservation: "That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of Versailles."

It would seem to be a self-evident proposition that acceptance of one treaty — the protocol of the Statute of the Court — would not include acceptance of another treaty — the Covenant of the League (Art. 14 of which it fulfils) and other parts of the treaty of Versailles. Nevertheless, this reservation seems to have been designed to make assurance doubly sure, and to satisfy political exigencies.

When the Conference of Signatory States met in Geneva in 1926, this reservation was naturally the first item considered. Henri Rolin of Belgium, a very astute jurist, declared that this reservation "merely expressed the legal situation." The president of the conference, M. van Eysinga of the Netherlands, "thought that all the members of the conference would share this opinion. In these circumstances, the conference could but accept the first reservation." This proposal was unanimously adopted without further discussion.[1]

The final conclusions of the conference, as already noted, were embodied in a Final Act and a Preliminary Draft of a Protocol. As to the first reservation, the Final Act declared as follows: [2]

> It may be agreed that the adherence of the United States to the Protocol of December 16, 1920, and the Statute of the Perma-

[1] *Minutes of the Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice* (League of Nations Document, 1926. V. 26), p. 11, hereinafter cited as *Minutes of the Conference;* see also Hudson, *op. cit.*, p. 3.

[2] *Minutes of the Conference*, p. 77; Hudson, *World Court*, p. 178.

nent Court of International Justice annexed thereto shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of peace of Versailles of June 28, 1919.

Since this is a general matter and involves no change in the Statute or operation of the Court, it was not necessary to include any reference to it in the Draft Protocol. Secretary Kellogg's note of February 19, 1929, notes that this reservation was accepted.[1]

In view of these facts, the Committee of Jurists which met in Geneva in March, 1929, did not discuss this reservation. The report which it adopted declares that

> No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States

in the first four reservations.[2] Nor is this reservation expressly mentioned in the Draft Protocol which the same committee adopted on the basis of Mr. Root's suggestions. It will be convenient here to pause to consider the situation under this protocol of an omission of such express acceptance.

In drafting the text which was eventually used in drawing up the protocol just referred to, Mr. Root had taken as a basis the Final Act and Preliminary Draft of a Protocol adopted by the 1926 Conference of Signatories. In those documents he found the acceptance of the first reservation but no express mention of it in the protocol itself. Accordingly it seemed useless to include it in the new protocol. But some phraseology had to be adopted to make clear the implicit acceptance of the reservation. This is accomplished by the language of the preamble and of Art. 1, which is as follows: [3]

[1] Hudson, *op. cit.*, p. 188.

[2] *Ibid.*, p. 196.

[3] *Ibid.*, p. 192; italics inserted.

> The states signatories of the Protocol of the Statute of the Permanent Court of International Justice, dated December 20, 1920, and the United States of America, through the undersigned duly authorized representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol *subject to the five reservations formulated by the United States in the resolutions adopted by the Senate on January 27, 1926.*
>
> Art. 1. The states signatories of the said Protocol *accept the special conditions attached by the United States in the five reservations* mentioned above to its adherence to the said Protocol *upon the terms and conditions set out in the following articles.*

The Draft Protocol prepared by Mr. Root and adopted by the committee thus takes the complete acceptance of the five reservations as its basic point of departure. It is only where the protocol specifies "terms or conditions" that there is any variation in this acceptance. Since the protocol contains no "terms or conditions" relative to the first reservation, its acceptance is unconditional and absolute.

> **Second Reservation: "That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other states, Members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies."**

In considering this reservation one should keep in mind that the judges and deputy-judges are elected from a list of nominees, by the Council and Assembly sitting simultaneously but independently. Art. 4 of the Court Statute provides that the "members of the Court shall be elected by the Assembly and by the Council" and Art. 10 provides

that "those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected."

When this reservation was discussed by the 1926 Conference of Signatories, the President pointed out that it might be said to constitute an amendment to the Statute. The Statute provides that candidates receiving a majority of votes of the Members of the Council and Assembly would be elected; under the second reservation it would be necessary to count also the vote of the United States. The conference, however, fully agreed that this claim of the United States was entirely reasonable and acceptable.[1] A suggestion was made that the desired object could be accomplished by the Council and Assembly inviting the United States to join them for the purposes of election, but this was not the prevailing view of the conference. The drafting committee appointed by the conference to formulate its results decided upon a simple acceptance of the second reservation and the Final Act accordingly contains the following paragraph:[2]

> It may be agreed that the United States may participate through representatives designated for the purpose and upon an equality with the other states, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, or for the filling of vacancies.

In incorporating this agreement into the protocol, however, it was thought best to specify that the vote of the United States should "be counted in determining the absolute majority of votes required by the Statute" in order that the above-mentioned amendment to the Statute might be clearly effected.[3] The protocol thus contains this express direction to the tellers who count the votes

[1] *Minutes of the Conference*, p. 11, 12, 46, 47.

[2] *Ibid.*, p. 77; Hudson, *op. cit.*, p. 178.

[3] *Minutes of the Conference*, p. 81; Hudson, *op. cit.*, p. 181; see also Hudson, *American Reservations*, p. 4.

instead of leaving it to them to make the necessary deduction from the general language. This extra measure of care may also be attributed to the fact that Europeans are always careful to note the difference between a "majority" (plurality) and an "absolute majority."

As in the case of the first reservation, Mr. Kellogg's letter of February 19, 1929, notes that the second reservation had also been accepted.

For the same reasons which influenced the Conference of Signatories, Mr. Root and the Committee of Jurists of which he was a member, included in the new protocol the same provision and in the same words. The fact that an amendment to the Statute was involved and that an explanatory sentence was added in the interests of clarification made it inappropriate to leave the acceptance of this reservation to be implied from the blanket acceptance clause. The "terms and conditions" in this case, however, are only such as seemed necessary to give effect to the Senate's intention. The final language in which the second reservation is accepted is therefore as follows: [1]

> Art. 2. The United States shall be permitted to participate, through representatives designated for the purpose and upon an equality with the signatory states, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of Judges or Deputy Judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Third Reservation: "That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States."

Art. 33 of the Court Statute provides that "the expenses of the Court shall be borne by the League of Nations, in

[1] Hudson, *World Court*, p. 192.

such manner as shall be decided by the Assembly upon the proposal of the Council." [1] The Senate did not wish to have the United States' share of the contributions fixed by the League bodies and therefore left the amount to be determined by Congress. This arrangement met with no objection from the Signatory States, who seemed to rely fully on the fairness of the United States to contribute a just proportion.[2] At the 1926 Conference of Signatories the president remarked "that this paragraph, which could hardly be called a reservation, since it consisted in an offer to participate in the expenses of the Court, gave rise to no objection." [3] This was unanimously agreed to without any discussion. The Final Act accordingly says: [4]

> It may be agreed that the United States pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

Since this reservation involves no amendment to the Statute, no express reference was made to it in the 1926 Preliminary Draft of a Protocol or in the committee's Draft Protocol of March, 1929. Its specific acceptance, accordingly, like that of the first reservation, is implied from the general acceptance. In common with the first two reservations, this reservation also was mentioned in Mr. Kellogg's note of February 19, 1929, as having been accepted.

Fourth Reservation — First Part: "That the United States may at any time withdraw its adherence to the said Protocol . . ."

The Statute of the Court contains no provision for the withdrawal of any state which has signed the protocol of

[1] *Infra*, p. 96 [736].

[2] The American quota would probably be the same as that of Great Britain, which in 1927 amounted to approximately $42,000; see Hudson, *American Reservations*, p. 5. However, it is noted that the Inter-parliamentary Union in adopting the League basis for allocation of expenses to its own budget assigns the United States a larger quota than Great Britain.

[3] *Minutes of the Conference*, p. 12.

[4] *Ibid.*, p. 77; Hudson, *World Court*, p. 178.

December 16, 1920, or acceded to it. It was the belief of some persons that a right of denunciation or withdrawal was implicit in every international convention, but this view was not universally held.[1] Regardless of the legal aspects of the matter, the conference had no objection to granting this right of withdrawal to the United States. It was felt, however, that if this right should be exercised at some future time a somewhat anomalous situation would result. The part of the fourth reservation now under consideration was merely one of several conditions under which the United States proposed to accede. If the arrangement did not subsequently prove to be satisfactory to the United States that state could withdraw, but it would leave the other states with an instrument whose organization had been somewhat altered in order to meet the wishes of the American Government. The Signatory States had in mind especially the second part of the fourth reservation, which provides that the Statute can not be amended without the consent of the United States, and the fifth reservation which deals with advisory opinions. It was accordingly considered only fair that the Signatory States should likewise have a power of withdrawal — not of withdrawal from the Court, but from the acceptance of the special conditions of the United States. Differently stated, the Signatory States felt that if the United States was to be given the privilege of restoring the *status quo ante*, they themselves should be accorded a like privilege. The Drafting Committee of the conference in giving expression to this idea stated that it had "been anxious to invest the exercise of such a right [of withdrawal by the Signatory States] with the character of a collective decision taken by a sufficiently large majority to insure that it is inspired exclusively by objective considerations arising from the discovery of some serious practical difficulty." [2] The Final Act accordingly contains the following statement on this point: [3]

[1] *Minutes of the Conference*, p. 12–13, 15 *ff.*

[2] *Ibid.*, p. 53; see also discussion of the Drafting Committee's report, *ibid.*, p. 55 *ff.*

[3] *Ibid.*, p. 77; Hudson, *op. cit.*, p. 178–179.

It may be agreed that the United States may at any time withdraw its adherence to the Protocol of December 16, 1920.

In order to assure equality of treatment, it seems natural that the signatory states, acting together and by not less than a majority of two-thirds, should possess the corresponding right to withdraw their acceptance of the special conditions attached by the United States to its adherence to the said Protocol in the second part of the fourth reservation and in the fifth reservation. In this way the *status quo ante* could be re-established if it were found that the arrangement agreed upon was not yielding satisfactory results.

It is to be hoped, nevertheless, that no such withdrawal will be made without an attempt by a previous exchange of views to solve any difficulties which may arise.

Although this provision was not considered as an amendment to the Statute,[1] the fact that it introduced a new element and established a method of procedure made it appropriate to include it in the protocol. The article in the protocol dealing with this matter is number 7, and reads as follows: [2]

> The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16, 1920. The Secretary-General shall immediately communicate this notification to all the other states signatories of the Protocol.
>
> In such case the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.
>
> On their part, each of the contracting states may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16, 1920, in the second part of its fourth reservation and in its fifth reservation. The Secretary-General shall immediately give communication of this notification to each of the states signatories of the present

[1] See Hudson, *American Reservations*, p. 5.

[2] *Minutes of the Conference*, p. 83; *infra*, p. 158 [798]. The text is Art. 8 of the Draft Protocol of the Committee of Jurists.

> Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the receipt of the said notification, not less than two-thirds of the contracting states other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

In his note of February 19, 1929, Mr. Kellogg included the fourth reservation among those which had been accepted. The Committee of Jurists in 1929 felt no need for discussing this reservation and in the Draft Protocol which it adopted the text of the 1926 draft is repeated *in ipsis verbis*.

It will be noted that the United States is thus accorded a privileged position in that it may effect its withdrawal by a simple notice to the Secretary-General of the League, with whom the ratifications of the Protocol of Signature are deposited. On the other hand, the other states must secure a two-thirds majority in order to bring about a similar result. It should be further pointed out that, even if the Signatory States had flatly accepted the first part of the fourth reservation, it would have been necessary subsequently to make some such arrangement as this in order to provide an appropriate method by which the withdrawal of the United States could be brought about. In concluding, therefore, the consideration of the first part of the fourth reservation it can be said that the "terms and conditions" on which this reservation is accepted can be stated as follows:

(1) The withdrawal of the United States is to be accomplished by the simple and logical method of notifying the Secretary-General of the League;

(2) The United States concedes to the other states the reciprocal right of withdrawal.

This second point seems eminently fair and one can not see how objection could be raised to it in the United States. On the other hand, it must be admitted that it does intro-

duce a new element which might properly be referred to the Senate for its approval.

Fourth Reservation — Second Part: " . . . the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States."

The Statute of the Court itself contains no provision for its amendment, but it seems to be an established rule of international law that no multipartite treaty can be amended without the consent of all parties thereto. This was the point of view expressed by a number of the members of the 1926 Conference of Signatories.[1] The Drafting Committee was of the opinion that all could agree that, "the Statute having been approved in 1920 by a unanimous agreement of the signatory states," it could be "only susceptible of modification by another unanimous agreement." [2] The committee accordingly in the Final Act states that [3]

> It may be agreed that the Statute of the Permanent Court of International Justice annexed to the Protocol of December 16, 1920, shall not be amended without the consent of the United States,

but in the protocol it gave expression to the general rule just mentioned by providing that [4]

> Art. 2. No amendment of the Statute annexed to the Protocol of December 16, 1920, may be made without the consent of all the contracting states.

As already noted, Mr. Kellogg in his note of February 19, 1929, acknowledged that this reservation had been accepted. The Committee of Jurists in March, 1929, saw

[1] See, for example, the views of M. Dinichert, *Minutes of the Conference*, p. 15; of the President, *ibid.*; and of M. Rolin, *ibid.*, p. 18.

[2] *Ibid.*, p. 53.

[3] *Ibid.*, p. 77; Hudson, *World Court*, p. 179.

[4] *Minutes of the Conference*, p. 81; *infra*, p. 130 [770].

no reason to alter this conclusion, but in the interest of simplification a slightly different phraseology was adopted, so that the final acceptance of this second half of the fourth reservation reads as follows: [1]

> Art. 3. No amendment of the Statute of the Court may be made without the consent of all the contracting states.

While it is true that the "terms and conditions" on which this reservation is accepted consist in requesting that the United States again accord a reciprocal right to the other parties, it can scarcely be maintained that any new element is thus introduced, since the pre-existing rule of international law made the requirement of unanimity for such amendments implicit in the treaty.[2]

Fifth Reservation — First Part: "That the Court shall not render any advisory opinion except publicly, after due notice to all states adhering to the Court and to all interested states, and after public hearing or opportunity for hearing given to any state concerned. . . ."

Both parts of the fifth reservation deal with advisory opinions, which have formed the center of vigorous discussion in the United States. So much has been written on this subject that it scarcely seems necessary at this time to review anew the entire controversy, but certain aspects of it may be brought to mind.[3]

The Statute of the Court itself does not provide for the rendering of advisory opinions, but its Art. 36 says that the Court has jurisdiction in "all matters specially provided for in treaties and conventions in force." [4] One of the con-

[1] *Infra*, p. 156 [796].

[2] See Hudson, *American Reservations*, p. 5–6, especially note 18, p. 6, and his reference to Professor Quincy Wright's article in 21 *American Journal of International Law*, p. 13.

[3] On advisory opinions in general, see Hudson, "The Advisory Opinions of the Permanent Court of International Justice," *International Conciliation*, November, 1925, No. 214.

[4] *Infra*, p. 96 [736].

ventions in force at the time was the Covenant of the League of Nations, Art. 14, which provides that "the Court may also give an advisory opinion upon any dispute or question referred to it by the Council or Assembly." Many persons in the United States feared that this phase of the Court's jurisdiction was incompatible with its functions as a judicial body, and they feared that the Court might deteriorate into a secret adviser of the League. The Court itself soon took steps which should have dispelled this fear. In the rules which it adopted on March 24, 1922, it provided in Art. 73 that when a request for an advisory opinion came to the Court the Registrar should immediately notify the Members of the League, the states mentioned in the Annex to the Covenant and any "international organizations which are likely to be able to furnish information on the question." Art. 74 of the rules further provided that advisory opinions should be printed and published.

On July 31, 1926, just about six months after the Senate passed its resolution containing the five reservations, the Court revised these rules in a way which brings their provisions into full accord with the first part of the fifth reservation.[1] The revision of Art. 73 requires notice to be given to a broader category of states which includes Members of the League, states "admitted to appear before the Court" and international organizations considered likely to be able to furnish information. The notice must now also contain a statement that the Court "will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question." There is further provision for comments by any of the parties notified upon the statements submitted by other parties.[2]

The previous provision in Art. 74 relating to the publication of advisory opinions is amplified by the require-

[1] The original rules are printed in Publications of the Court, Series D, No. 1, p. 66 *ff.*, and the revised rules in *ibid.*, p. 33 *ff.*, and in Hudson, *World Court*, p. 121 *ff.*

[2] Hudson, *op. cit.*, p. 137–138; *infra*, p. 102 [742].

ment that "advisory opinions shall be read in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of states, of Members of the League and of international organizations immediately concerned." [1]

These new rules were indeed largely clarifications of the current practice of the tribunal, but they constitute the most complete possible arrangements for carrying into effect the first part of the fifth reservation.

This fact was naturally noted by the Conference of Signatories in 1926. The president at once pointed them out and stated that he assumed they would satisfy the desiderata named by the Senate.[2] With practically no discussion, the conference noted its acceptance of the first part of the fifth reservation. At a subsequent session of the committee, however, the president, with what has proved to be an accurate foresight, said that, while it was true that the rules met the desires of the United States regarding publicity, yet the United States might say "that the Court might alter its Rules any day." [3] The drafting committee had this suggestion in mind in preparing the Final Act, the appropriate paragraph of which is couched in the following terms: [4]

> In the matter of advisory opinions, and in the first place as regards the first part of the fifth reservation, the Government of the United States will, no doubt, have become aware, since the dispatch of its letters to the various Governments, of the provisions of Arts. 73 and 74 of the Rules of Court as amended by the Court on July 31, 1926 (Annex A). It is believed that these provisions are such as to give satisfaction to the United States, having been made by the Court in exercise of its powers under Art. 30 of the Statute. Moreover, the signatory states might study with the United States the possible incorporation of certain stipulations of principle on this subject in a protocol of execution

[1] Hudson, *op. cit.*, p. 138, and *infra*, p. 103 [743].

[2] *Minutes of the Conference*, p. 19.

[3] *Ibid.*, p. 46; see also other views expressed by the president on p. 50.

[4] *Ibid.*, p. 77; Hudson, *op. cit.*, p. 179.

such as is set forth hereafter (Annex B), notably as regards the rendering of advisory opinions in public.

Apparently the conference believed that it would be unnecessary to insert in the protocol detailed provisions on this point, and they accordingly contented themselves with the brief statement of Art. 3 that [1]

> The Court shall render advisory opinions in public session.

As the president of the 1926 conference had foreseen, the United States was not content with the provisions in the Rules of Court. Mr. Kellogg pointed out in his note of February 19, 1929, that the rules of the Court are "subject to change at any time," and that for this reason the provision in the protocol "did not furnish adequate protection to the United States." [2]

This was the situation which had to be met by Mr. Root and the Committee of Jurists in March, 1929. It was evident from the proceedings of the 1926 conference that there was no basic objection to the first part of the fifth reservation, and it could therefore be assumed that an agreement on phraseology could easily be reached. In his original draft proposal Mr. Root suggested the following language which would serve to cover the question of notice and at the same time to perpetuate the practical procedure laid down by the amended Art. 73 of the rules of the Court: [3]

> Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other states mentioned in the now existing Art. 73 of

[1] *Minutes of the Conference*, p. 83; *infra*, p. 130 [770]. The members of the conference do not seem to have considered at any length the point made by Professor Hudson that it would be an unsound principle to deprive the Court of its power to make rules governing its own procedure by incorporating stipulations on these points in the treaty itself. While agreeing with the principle advocated by Professor Hudson, it may be noted that the Statute already contains 26 articles (Arts. 39–64) regulating the Court's procedure. For these views of Professor Hudson, see his *American Reservations*, p. 7–9.

[2] Hudson, *World Court*, p. 190.

[3] *Minutes*, p. 9.

> the Rules of Court, stating a reasonable time-limit fixed by the President, within which a written statement by the United States concerning the request will be received.

In preparing the final draft of the protocol which was ultimately adopted by the Committee of Jurists the provision just quoted was retained in Art. 5, but in addition there was inserted the following Art. 4: [1]

> The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Arts. 73 and 74 of the Rules of Court.

It seems beyond question that these provisions constitute a complete acceptance of the first part of the fifth reservation. They have the distinct advantage over a simple statement of acceptance in that, by their reference to the existing Rules of Court, they make immediately available an exact procedure by which the reservation can be made practically useful.

The perpetuation of this provision in treaty form would be an excellent thing for the Court, preventing permanently any deviation from the essentially judicial nature of its conduct which it has hitherto so wisely and courageously followed. The Senate will have made a distinct contribution to the cause of international justice by accomplishing this result.

> **Fifth Reservation — Second Part: ". . . nor shall it [the Court], without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."**

It is this reservation which has caused the greatest difficulty because its terms are open to several interpretations. Some of the possible interpretations would result

[1] *Minutes*, p. 132; *infra*, p. 156 [796].

in the conferring of powers the exercise of which, it was feared, might destroy the utility of advisory opinions as an instrument for the pacific settlement of international disputes. This view was expressed by Sir Austen Chamberlain in the meeting of the Council on March 18, 1926, at which it was decided to convoke the 1926 Conference of Signatories. The British foreign minister as his country's representative in the Council declared: [1]

> The terms of the fifth paragraph of the Senate resolution necessitate further examination before they could safely be accepted by the states which are parties to the Protocol of 1920. This paragraph is capable of bearing an interpretation which would hamper the work of the Council and prejudice the rights of Members of the League, but it is not clear that it was intended to bear any such meaning. The correct interpretation of this paragraph of the resolution should be the subject of discussion and agreement with the United States Government.

But since the United States did not accept the invitation to attend the conference, no discussion and consequently no agreement resulted. The members of the conference were forced to rely largely on the Senate debates and these afford conflicting points of view.

Before proceeding further, three types of advisory opinions may be suggested. The first is the type of secret confidential advice from the Court to the Council or Assembly which was regarded with particular repugnance in the United States Senate. It may safely be said that this type of advisory opinion does not exist and never has existed. The rules of the Court from the very first have made it impossible and under the protocol adopted by the Committee of Jurists this result is made certain and permanent. If the Council of the League desires this type of advice it must seek it from an *ad hoc* committee of jurists as has been done on several occasions.[2]

The second type of advisory opinions is that in which

[1] Hudson, *op. cit.*, p. 173.

[2] See the remarks of President Scialoja in the Committee of Jurists, *Minutes*, p. 12.

the Council [1] acts as a transmitting agency or letter box, although even in such cases it preserves its liberty of action.[2] This is the type exemplified in Advisory Opinions 1, 2, 3 and 13, concerning the functions and competence of the International Labor Organization. When a problem arises in that organization it requests the Council to seek from the Court an advisory opinion interpreting the treaty provisions under which the Labor Organization operates. The same situation exists with regard to other organizations.

The third type of advisory opinion is undoubtedly the most important and it is the one which is usually in mind when this device is referred to as a method of pacific settlement of international disputes. In a sense these advisory opinions are a form of international arbitration although, unlike arbitral awards, they do not bind the parties to a dispute. The situation described is evident from a consideration of the Fourth Advisory Opinion.[3] France adopted certain nationality decrees for Tunis and Morocco which Great Britain claimed unlawfully infringed upon the rights of British subjects in those protected areas by compelling them to serve in the French army. The British Government offered to arbitrate the question as to France's right to enforce such decrees. The French Government replied that nationality laws were of solely domestic concern and that arbitration was impossible. Great Britain accordingly appealed to the Council of the League. It was suggested that the Court should be asked to render an advisory opinion upon the question whether the matter in issue was solely a subject of domestic jurisdiction. Although the French Government had been unwilling to agree to arbitration, it was content to raise no objection in the Council against the reference of this question to the Court. The Court expressed the opinion that while, in

[1] Although both the Council and Assembly have the privilege of requesting advisory opinions, the latter body has not yet exercised that privilege and in general hereafter only the Council will be referred to.

[2] *Minutes*, p. 76.

[3] Publications of the Court, Series B, No. 4, summarized in Hudson, *op. cit.*, p. 60 *ff.*

general, nationality questions came within the category of domestic questions, this was not the case when the matter was covered by an international treaty. As a result of this opinion, the two countries effected an amicable adjustment of their differences.[1]

In numerous other cases also, it has been found that, when national susceptibilities and political complications prevent a direct submission to an international judicial tribunal, the parties are willing that some legal point in the dispute should be submitted to the Court for an advisory opinion. It must be borne in mind that while the law's delays are the object of complaint in the private law field, internationally a delay is often the means of preventing war. This is the basic theory of the "Bryan peace treaties," which provide a "cooling-off" period. But the delay must be accomplished by some step toward solution since, if nothing is done, national feelings grow steadily more intense until the war-fever is fully aroused.

It was these factors which the statesmen at Geneva had in mind when considering the fifth reservation. There being no way of determining how or when the consent of the United States would be manifested for the requesting of an advisory opinion, it was feared that the American decision might be so long delayed as to destroy the utility of the function of such reference to the Court.[2]

From the point of view of the United States, a further classification of advisory opinions should be noted, since much stress was laid upon it in the subsequent discussions. An advisory opinion may relate to a dispute to which the United States is a party or it may relate to a dispute or question other than a dispute in which we are less directly interested.

The first grouping, stated in general terms, raises the question whether the Court can or will render an advisory opinion concerning a dispute between a Member of the League and a non-Member when the latter does not con-

[1] League of Nations, *Treaty Series*, XVIII, p. 306.

[2] Hudson, *American Reservations*, p. 9–18.

sent. This issue was raised before the Court and settled in 1923.[1]

In that year the Council, on the suggestion of Finland, requested the Court to render an opinion regarding the treaty of Dorpat of October 14, 1920, between Finland and Russia. This was the now famous "Eastern Carelia case." The question arose from an acute dispute between the two countries; Finland was a Member of the League, Russia was not. The Soviet Government sent a telegram to the Court in which it forcefully denied the Court's competence to consider the question and refused to take any part in the proceedings.

On July 23, 1923, the Court announced its conclusion that it could not render any opinion. The Court declared that it "is well established in international law that no state can, without its consent, be compelled to submit its disputes with other states either to mediation or to arbitration, or to any other kind of pacific settlement." The Court further pointed out that "answering the question would be substantially equivalent to deciding the dispute between the parties. The Court, being a court of justice, can not, even in giving advisory opinions, depart from the essential rules guiding their activity as a court." To state this result in terms of American interests, the Court has decided that it can not render any advisory opinion regarding an actual dispute between the United States and a Member of the League without the former's assent.

There is no such judicial precedent for a dispute or question to which the United States is not a party but in which it has an interest. In the nine years of its existence the Court has rendered 16 advisory opinions, none of which has affected American interests. This is not proof that a question involving our interests will never be submitted to the Court, but it does indicate that the occasions, if they ever do arise, will not be frequent. The situation, however, which the Senate seems to have had in mind in framing the fifth reservation is one in which, for example, a dispute

[1] Advisory Opinion No. 5, Series B, No. 5, summarized in Hudson, *World Court*, p. 64–66.

arises between Great Britain and the Argentine Republic, wherein somehow the Court might be asked to define the Monroe doctrine. Or a dispute might arise between Australia and Japan regarding immigration laws and the Court be asked to give its opinion on the power of one state to exclude the nationals of another. In this connection, it should be noted that such an opinion could be rendered now at any time before the United States adheres to the Court Statute. In other words, this is not a situation which would arise from the fact of our participation. Nor is it true that such an opinion would have any more binding effect upon us if we were a participant. The advisory opinions of the Court, as their name implies, are merely advisory, and have no direct compelling legal force. Neither the Council of the League nor the states involved are compelled to act in accordance with the opinion. But the Court has achieved, through the very excellence of its work, a position of respect and authority, and its views have great influence throughout the world. This influence, however, resting on merit, is just as great with regard to a nonparticipating as to a signatory state. The signature of the protocol of December 16, 1920, and the acceptance of the Statute incidental thereto, imposes no new legal or moral obligation with regard to acquiescence in advisory opinions.[1]

To return to the discussion of this second part of the fifth reservation in the 1926 Conference of Signatories, it is found that one of the basic difficulties which pervaded this and subsequent discussions was a matter of the interpretation of the Covenant of the League. It was generally believed that by this stipulation the Senate sought to secure a veto power over requests for advisory opinions.[2] It was therefore pertinent to inquire whether such a power would place the United States in a privileged or in an equal position as against the Members of the League. The question resolved itself therefore into this: In adopting a motion to

[1] Hudson, *American Reservations*, p. 15.

[2] This point will be analyzed later; see *infra*, p. 57 [697].

request an advisory opinion from the Court, is it necessary to have a unanimous vote in the Council or Assembly, or does a majority vote suffice? If the former be true, then each state represented has a veto power and a like position could properly be claimed by the United States. This would not be so if the latter alternative is correct.

The pertinent article of the Covenant is number 5, which provides that except for "matters of procedure" — which includes the appointment of "committees" to investigate particular matters — "decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting." It has not yet been decided whether the requesting of an advisory opinion is a procedural matter. As Professor Hudson has well said, "The question is one of politics as well as law, and the last word does not belong to the lawyers." [1] The truth of this statement will be more apparent in a subsequent discussion.

In the discussions of the 1926 Conference of Signatories, great weight was attached to a declaration made in the Senate by Senator Walsh of Montana. Senator Walsh maintained that the Council must proceed by unanimity in requesting an advisory opinion and that therefore the United States was seeking merely a position of equality.[2] From this position the conclusion was logically reached that some formula which would assure the United States a position of equality would be satisfactory to that Government.

It was recognized, however, that the difficulty might be avoided if the question of unanimity could be definitely settled and several members of the conference were in favor of asking the Council to request the Court to give an advisory opinion on the matter.[3] This view did not prevail.

The conference constantly bore in mind the distinction

[1] Hudson, *American Reservations*, p. 12; *ibid.*, note 27, for collection of citations to views of writers on the subject.

[2] *Minutes of the Conference*, p. 22, speech of M. Rolin.

[3] See remarks of M. Rolin, M. Pilotti and M. Dinichert, *ibid.*, p. 23, 26 and 39.

between disputes to which the United States was a party and other disputes or questions. With regard to the former category the conference seemed to feel that the American Government was justified in insisting that its consent must be first secured. But the conference believed that this desire had already been gratified by the jurisprudence of the Court itself in the Eastern Carelia case. So far as the second category of cases was concerned, the conference felt that the according of a position of equality with the states represented in the Council and Assembly would be fair and probably satisfactory to the United States.[1]

There was, however, the further procedural difficulty of determining how and when the consent of the United States would be made known. Was this a matter which would have to be referred to the Senate, which might not be in session when the question arose; or did it fall within the powers of the Executive? Would the United States designate some one to sit with the Council or Assembly for this purpose, or would negotiations have to be carried on with Washington? Would the Council know the views of the United States before reaching its decision or would these views be made known only to the Court after it had received the request? [2] In view of the above-mentioned importance of the time element in some cases, it is obvious that these questions could not be overlooked. On the other hand, it seemed fruitless to discuss them without the presence of a representative of the United States.

There was some discussion also of the wording of the reservation — "has or claims an interest" — [3] but, in view of the formula finally adopted, the definitive interpretation of this phrase was unnecessary.

These various points are made clear in the Final Act.[4] As regards disputes to which the United States is a party, the Eastern Carelia case is referred to as meeting the desire of the United States. As regards other disputes

[1] See report of Drafting Committee, *Minutes of the Conference*, p. 53–54.

[2] See remarks of Sir George Foster, *ibid.*, p. 28–30.

[3] *Ibid.*, p. 25, 32, 37, 38 and 44.

[4] *Ibid.*, p. 79; Hudson, *World Court*, p. 179–180.

or questions in which the United States claims an interest, it is agreed that a position of equality with states represented on the Council or Assembly should be accorded and it is noted that the conference understands that this is the object of the United States. Attention is then drawn to the uncertainty attending the question of unanimity. The last two paragraphs of the Final Act are clear descriptions of the whole situation regarding advisory opinions and should be read in full: [1]

> Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give as provided for in the Covenant. The conference is confident that the Government of the United States entertains no desire to diminish the value of such opinions in connection with the functioning of the League of Nations. Yet the terms employed in the fifth reservation are of such a nature as to lend themselves to a possible interpretation which might have that effect. The Members of the League of Nations would exercise their rights in the Council and in the Assembly with full knowledge of the details of the situation which has necessitated a request for an advisory opinion, as well as with full appreciation of the responsibilities which a failure to reach a solution would involve for them under the Covenant of the League of Nations. A state which is exempt from the obligations and responsibilities of the Covenant would occupy a different position. It is for this reason that the procedure to be followed by a non-Member state in connection with requests for advisory opinions is a matter of importance and in consequence it is desirable that the manner in which the consent provided for in the second part of the fifth reservation will be given should form the object of a supplementary agreement which would insure that the peaceful settlement of future differences between Members of the League of Nations would not be made more difficult.
>
> The conference ventures to anticipate that the above conclusions will meet with acceptance by the United States. It observes that the application of some of the reservations of the United States would involve the conclusion of an appropriate agreement between the United States and the other states signatories of the Protocol of December 16, 1920, as was indeed

[1] *Minutes of the Conference*, p. 79; Hudson, *op. cit.*, p. 180.

envisaged by the Secretary of State of the United States in his reply to the Secretary-General of the League of Nations dated April 17, 1926. To this end, it is desirable that the states signatories of the Protocol of December 16, 1920, should conclude with the United States a protocol of execution which, subject to such further exchange of views as the Government of the United States may think useful, might be in the form set out below.

In drafting a text for incorporating these conclusions in the Preliminary Draft of a Protocol, both classes of disputes or questions would seem to be covered, though no attempt was made to perpetuate the doctrine of the Eastern Carelia case in treaty form. It seemed clear, however, from the words of the Final Act that the Signatory States were fully in accord as to the soundness of that doctrine.[1] The text in question is contained in Art. 4 of the protocol and is as follows: [2]

> The manner in which the consent provided for in the second part of the fifth reservation is to be given, will be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.
>
> The states signatories of the Protocol of December 16, 1920, will be informed as soon as the understanding contemplated by the preceding paragraph has been reached.
>
> Should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between states, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council.

[1] In view of this fact and of subsequent developments, it is no longer necessary to debate the supposed disagreement with the doctrine expressed by the Council, nor the action of the Court in the subsequent Mosul case, which has improperly been claimed by some persons to be contrary to the Carelia case. For the Council's action on the Carelia case, see *Official Journal*, November, 1923, p. 1335–1337. For discussion of the Mosul case, see Hudson, "The Fourth Year of the Permanent Court of International Justice", *International Conciliation*, April, 1926, No. 219, p. 1, 19 *ff.*

[2] *Minutes of the Conference*, p. 83; *infra*, p. 130 [770]. For detailed discussion of the Conference debates, see Quincy Wright, "The United States and the Court," *International Conciliation*, September, 1927, No. 232, p. 339 *ff.*, and the same writer in 21 *American Journal of International Law*, p. 9 *ff.*

The Final Act and the Preliminary Draft of a Protocol thus contemplated some further negotiations on the formulas to be adopted. In his note of February 19, 1929, Mr. Kellogg recognized this fact. He pointed out that it was the second part of the fifth reservation which "raised the only question on which there is any substantial difference of opinion." Alluding no doubt to that part of the Final Act quoted above which deals with the importance attached by the Members of the League to advisory opinions, Mr. Kellogg wrote in friendly and sympathetic terms.[1] "The Government of the United States," he declared, "desires to avoid in so far as may be possible, any proposal which would interfere with or embarrass the work of the Council of the League of Nations, doubtless often perplexing and difficult, and it would be glad if it could dispose of the subject by a simple acceptance of the suggestions" of the Conference of Signatories. Nevertheless, certain "elements of uncertainty" in these suggestions seemed to him not to preclude agreement, but to "require further discussion." He noted that the "powers of the Council and its modes of procedure depend upon the Covenant of the League of Nations, which may be amended at any time. The ruling of the Court in the Eastern Carelia case" was also, he pointed out, "subject to change at any time." "For these reasons," he concluded, "without further inquiry into the practicability of the suggestions, it appears that the Protocol submitted by the 24 Governments in relation to the fifth reservation of the United States would not furnish adequate protection to the United States." But again Mr. Kellogg fortunately took pains to indicate that the situation was not hopeless, but that the door was wide open for further negotiation. In this spirit he declared:

> Possibly the interest of the United States thus attempted to be safeguarded may be fully protected in some other way or by some other formula. The Government of the United States feels that such an informal exchange of views as is contemplated by the 24

[1] Hudson, *World Court*, p. 189.

Governments, should, as herein suggested, lead to agreement upon some provision which in unobjectionable form would protect the rights and interests of the United States as an adherent to the Court Statute, and this expectation is strongly supported by the fact that there seems to be but little difference regarding the substance of these rights and interests.

So it was that when the Committee of Jurists met in Geneva a few weeks later, the problem had been crystallized into one of finding a formula which would meet the views of the Signatory States and at the same time fully safeguard the interests of the United States. The framing of such a formula is Mr. Root's most recent contribution to the Court in the creation of which he was so largely instrumental.

In the period of a little more than two years which elapsed between the end of the 1926 Conference of Signatories and the dispatch of Mr. Kellogg's letter, much discussion had ensued as to the meaning of the words "claim" and "interest" in the fifth reservation. Numerous solutions had been suggested.[1] Mr. Root followed other lines of approach which he explained to the Committee of Jurists.[2] Two great difficulties had been experienced in the past, the one in defining "interest," the other in solving the question of the necessity of unanimity in the Council. Mr. Root avoided both these difficulties. He noted that it was practically impossible to find an abstract formula of general application which would apply satisfactorily to so multiform a conception as "interest." The United States has an "interest" in every rule of international law and in the prosperity of every country which is a customer for its products. But these, apparently, were not the "interests" which the Senate wished to safeguard. Moreover, it was apparent that a definition in terms of "legal interest" would be inade-

[1] See, for example, Esther Everett Lape, "A Way Out of the Court Deadlock," *Atlantic Monthly*, October, 1927, p. 517; Raul Fernandes, "The United States and the Permanent Court of International Justice," originally published in 34 *Revue Général de Droit International Public*, p. 561, translated into English and republished by the American Foundation. See views of Professor Hudson on these suggestions and his own profound solution in *American Reservations*, p. 13–21.

[2] *Minutes*, p. 11, 13, 15.

quate, since it would exclude such matters of policy as the Monroe doctrine. Mr. Root accordingly endeavored to shift the discussion from the abstract to the concrete and directed his plan toward a procedure for dealing with individual concrete cases as they arose. Following the position indicated by Mr. Kellogg in his note of February 19, 1929, he asserted that "there was no intention on the part of the United States to hamper the procedure of requesting advisory opinions upon unreal and unsubstantial grounds." [1] His design was to afford to the United States guaranties of protection which would be definite and permanent and at the same time to give assurance to the states Members of the League that there would be no undue interference with the use of advisory opinions.

For the accomplishment of these aims Mr. Root took two points of departure. The first was the acceptance of the five reservations and the second was the Final Act and Preliminary Draft of a Protocol adopted by the conference of 1926. It was possible for him to do this because, as Mr. Kellogg had said, there was "little difference regarding the substance" of the rights and interests of the United States. The difficulty was therefore in reality a procedural one, and the "Root Plan" is a procedural device. One aspect of this procedural difficulty was the uncertainty as to how the consent of the United States should be made known. In a great majority of actual cases, the emphasis in the fifth reservation would be on the words "the consent of the United States" and not on the statement that the Court shall not "entertain any request for an advisory opinion." The Root plan is also a device for manifesting that consent.

Although Mr. Root's draft avoided the necessity for settling the vexed question of unanimity,[2] this topic did not escape the attention of the Committee of Jurists. At the meeting of the Assembly in September, 1928, an attempt had been made to reach a solution of this question, but the move had been sidetracked by the adoption of an innocuous

[1] *Minutes*, p. 13.

[2] See the appreciation of this fact by Mr. van Eysinga, *ibid.*, p. 13, and by M. Politis, p. 14; see also Mr. Root's own statement, p. 15.

resolution suggesting that the Council consider the matter at an appropriate time.[1] The discussion in the committee clearly brought out the political complications of the issue to which allusion has been made above. For the large states, the rule of unanimity would seem to be preferable because, as Members of the League, they are deemed to have consented in advance to the rendering of advisory opinions in disputes to which they are parties,[2] and accordingly they wish to be able to control requests for such opinions. Such control would be theirs only if the unanimity rule applies.[3] In this respect their position is not as free as that of the United States as a non-Member of the League. On the other hand, the small states have constantly been eager to increase the scope of the Court's activity, since they see in that tribunal a possible safeguard for rights which they are not powerful enough to enforce in other ways. Thus, too, they would welcome the adoption of a rule that advisory opinions could be requested from the Court by a majority vote.[4] Forty-two states, including the British Empire, France, Germany and Italy, have signed the so-called "optional clause," providing for the compulsory jurisdiction of the Court.[5]

[1] *Records of the Ninth Assembly. Plenary Meetings*, p. 73, 138 (*Official Journal*, Spec. Sup. No. 64).

[2] In the Eastern Carelia case, the Court seems to have taken this view. After declaring that under international law no state could be compelled to submit its disputes to any form of pacific settlement without its consent, it noted that this consent "can be given once and for all in the form of an obligation freely undertaken" or in a special case by consent *ad hoc*. "The first alternative," the Court says, "applies to the Members of the League who, having accepted the Covenant, are under the obligation resulting from the provisions of this pact dealing with the pacific settlement of international disputes. As concerns states not Members of the League, the situation is quite different; they are not bound by the Covenant." Series B, No. 5, p. 27.

[3] There is also, of course, the possibility of a rule of "qualified unanimity," requiring the affirmative vote of all states except the actual parties to the dispute; see Hudson, *American Reservations*, p. 11, especially note 28.

[4] The writer should not be understood as asserting that the above views are held by all the large and small states respectively. An attempt has been made merely to point out lines of general interest of each group.

[5] See *infra*, p. 82 [722]. The 1929 session of the League Assembly witnessed the signature of 15 of the total number of states, including those of the British Empire, Italy and France. This general acceptance of the compulsory jurisdiction of the Court by the great states may alter materially the situation described in the text. The states which signed the optional clause at Geneva in September 1929 are: Australia, Canada, Czechoslovakia, France, Great Britain, Greece, India, Irish Free State, Italy, Latvia, New Zealand, Nicaragua, Peru, Siam and South Africa.

This antithesis may be traced in the committee discussions. The chairman, M. Scialoja of Italy, while asserting that his personal view had always been that technically a majority vote would suffice, pointed out that, because no decision on the question could be reached, "in practice advisory opinions were not asked for" on recent occasions, the Council consulting instead groups of jurists.[1] Anticipating that complications would arise under the procedure suggested by Mr. Root, he believed that the ultimate effect "would be a tendency to abolish the whole system of advisory opinions. Personally, he would not greatly regret their disappearance." [2] He favored a solution of the difficulty by deciding upon the unanimity rule.

A different point of view was expressed by M. Raestad, former foreign minister of Norway, in a powerful statement which he made at the twelfth session of the committee.[3] M. Raestad said that the group of nations to which his own country, Norway, belonged, attached the greatest importance to the adhesion of the United States to the Court. But at the same time these nations considered the maintenance of the system of advisory opinions as of equal importance. If the adhesion of the United States could not be secured without endangering this system, Norway and the other countries would be placed in an extremely difficult situation.[4] M. Raestad was glad to note, however, that these countries were not actually placed in such a dilemma since the issue was avoided under Mr. Root's plan.

Sir Cecil Hurst's report on the question of the accession of the United States alludes to these matters. He notes that the committee's task would have been simplified if it had felt able to recommend abandoning the whole system of advisory opinions. "The committee, however, is of opinion that it can not recommend any such drastic solution. The system of asking the Court for an advisory

[1] *Minutes*, p. 11.

[2] *Ibid.*, p. 15.

[3] *Ibid.*, p. 76–77.

[4] It may be pertinent to recall here that the accession of the United States can be accomplished only by the unanimous consent of the present Signatory States.

opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled parties to a dispute to ask for the submission of their difference to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit it in the form of international litigation." [1]

The report continues: [2]

> The committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous.
>
> As is pointed out in the Final Act of the Special Conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. All that is possible is to guarantee to the United States a position of equality in this matter with the States which are represented in the Council or the Assembly of the League.

The method by which the Root Plan avoids this pitfall will be described shortly. Meanwhile we may return to a consideration of its general scope and special provisions.

It has already been noted that the Root Plan was based on the Final Act and Preliminary Draft of a Protocol formulated by the 1926 Conference of Signatories. The plan retained the distinction between disputes to which the United States is a party and disputes in which the United States merely has an interest. But Mr. Kellogg had pointed out that the United States could not be satisfied with the conference's reference to the jurisprudence of the Court, since the precedent of the Eastern Carelia case could be reversed at any time. The conference had in reality agreed that no opinion should be rendered without the consent of the United States in any dispute to which

[1] *Infra*, p. 141 [781].

[2] *Infra*, p. 142 [782].

the United States might be a party. But the form in which this agreement was expressed was unsatisfactory. In Mr. Root's original plan the first paragraph stated this point flatly.[1] But his second paragraph laid a like prohibition on the rendering of an advisory opinion without the consent of the United States touching any other dispute or question in which the United States claims an interest. Thus the whole field is covered.

The original Root Plan then has three paragraphs whose purpose is described in the third paragraph of the plan. "The manner in which shall be made known whether the United States claims an interest and gives or withholds its consent shall be as follows:—" There are three possible steps or stages in the procedure: first, exchange of views with the Council or Assembly; second, notice from the Court with opportunity for hearing; third, stay of Court proceedings and further exchange of views with the Council or Assembly.

It will be seen that the fundamental point in Mr. Root's scheme is this exchange of views with the League organs which propose requests for advisory opinions. Since there has been some objection in the United States to dealing with the League in matters relating to the Court, certain observations on this point may be in order. The Preliminary Draft of a Protocol adopted by the 1926 Conference of Signatories had, in its Art. 4, suggested that an understanding be reached between the Government of the United States and the Council of the League as to the manner in which the consent of the United States should be given. Thus, in effect, the Signatory States constituted the Council their agent to make this arrangement. All the Signatory States at that Conference were also Members of the League. Indeed, Brazil, which has withdrawn from the League, is at present the only non-Member state which is a party to the Court treaty. It was thus quite natural for these states to select as agent the body which may be called the executive committee of the League of Nations.

[1] The text of the original plan is in *Minutes*, p. 9, and Appendix, p. 138 [778].

There would appear to be no reason for our refusing to deal with any agent which they chose to designate. There are numerous precedents for like action in the past. When, in 1911, the United States wished to become a member of the Permanent International Council for the Exploration of the Sea at Copenhagen,[1] it could not deal directly with the Council, but had to negotiate through the Danish Government, which acts as its agent in all diplomatic affairs.[2] Similarly, the Commission Internationale pour l'Exploration Scientifique de la Mer Méditerranée conducted its diplomatic negotiations through the Prince of Monaco.[3] The two Hague Peace Conferences of 1899 and 1907 had no formal permanent organization, so that difficulty was experienced when it was desired to convene a third conference. On January 31, 1914, Secretary of State Bryan sent out a circular instruction to our diplomatic officers regarding such further conference and he pointed out the need of an agency through which the various Governments might operate.[4] He suggested the formation of an "international preparatory committee" and thought that the Administrative Council of the Permanent Court of Arbitration at The Hague might well be used in this capacity. This council, not wholly dissimilar in composition to the Council of the League, is composed of the Netherlands minister for foreign affairs and the diplomatic representatives of the contracting states accredited to The Hague. Secretary Bryan's further statement in this connection is rather apt to the situation regarding the need for an agent such as the Council of the League, for handling the negotiations of the states parties to the Court treaty with the United States. "To this Council," — that is, the Administrative Council

[1] This Council is the most important international organization for the study and protection of deep-sea fisheries. It has been in existence for 27 years and has now a membership of 14 countries. The United States has not continued its participation since the war, due to the fact that such marine problems of particular interest to the United States are now handled by a separate organization on this side of the Atlantic.

[2] *Rapports et Procès-Verbaux* of the Council, Vol. XV, p. 12 and 42, and Vol. IL, p. 112.

[3] See *Bulletin de l'Institut Océanographique*, No. 167.

[4] United States, *For. Rel.*, 1914, p. 4.

of the Permanent Court of Arbitration, — he said, "the task of preparation for the conference may readily and appropriately be committed. The place at which the council sits leaves nothing to be desired from the point of view of convenience, while the intrusting of the work to a competent body already in existence would result in an appreciable saving both in time and expense."

With a similar purpose, the Second International Opium Conference of 1913, at which the United States was represented, designated the Dutch Government as the general agent for handling affairs under the convention adopted. As ratifications of the Court treaty are deposited with the Secretary-General of the League as agent, so ratifications of this opium treaty were deposited with the Dutch Government. With this Government as agent, we negotiated also for arranging a third conference.[1]

Adopting a slightly different method, but with the same purpose in view, the convention for the protection of industrial property, which was ratified by the United States on June 20, 1912, continued the organization of the prior conventions of 1883 and 1900, whereby a Union for the Protection of Industrial Property was set up with a central bureau at Bern. For this bureau the Swiss Government acts as agent for the exchange of information, the preparation of further conferences and the like.[2] Similar examples of this kind could be multiplied, but it will suffice to note that the slavery convention of 1926, to the ratification of which the Senate consented on February 25, 1929, makes the Secretary-General of the League the agent for the exchange of information, the deposit of ratifications and the like.[3]

As Mr. Hughes has said, "there is no more difficulty in dealing with the organization of the League in this way for the purpose of protecting our interests or furthering our policies than there would be in dealing with the British

[1] United States, *For. Rel.*, 1912, p. 217–219; 1914, p. 924–926.

[2] *Ibid.*, 1913, p. 1363.

[3] United States, *Treaty Series*, No. 778.

Empire." [1] At the present time we have exchanged ministers with Canada and the Irish Free State, thus recognizing their independent status and dealing with them direct. But for dealings with the other Dominions of equal status, such as Australia and New Zealand, we still use the agency of the British Foreign Office.

Now in the negotiations of the United States relative to the Permanent Court of International Justice, it is possible to write 50 or more notes to the several participating Governments. But it has been seen that these Governments prefer to meet together to discuss these matters. It would also be conceivable that for the purpose of manifesting our consent to the rendering of an advisory opinion, one might suggest separate notice to each interested state. But such an awkward and tedious process could not possibly be accepted by the other states and it would scarcely recommend itself, on the grounds of efficiency, to the United States. In the above-quoted words of Mr. Bryan, negotiation with some agent of the many states involved "would result in an appreciable saving both in time and expense."

So Mr. Root, following these ideas and precedents, suggested in his plan direct dealing with the Council or Assembly of the League, in which requests for advisory opinions originate.

In the original Root Plan, however, it is merely provided in the first instance that, "whenever in contemplation of a request for an advisory opinion it seems to them desirable, the Council or Assembly may invite an exchange of views with the United States and such exchange of views shall proceed with all convenient speed."

The second step in the plan is based on the existing Rules of Court and provides that

> Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof among other states mentioned in the now existing Art. 73 of

[1] Speech of Charles Evans Hughes at New York Republican State Convention, April 15, 1924.

> the Rules of Court stating a reasonable time-limit fixed by the President [of the Court] within which a written statement by the United States concerning the request will be received.

If in response to this notice the United States advises the Court that the request "touches a dispute or question in which the United States has an interest and that the United States has not consented to the submission of the question," then all proceedings in the Court are stayed until such an exchange of views as previously described takes place. The final paragraph of the plan is descriptive of what may happen in the exchange of views and should be read in full:

> If after such an exchange of views either while a question is in contemplation or after a question has gone to the Court, it shall appear (1) that no agreement can be reached as to whether the question does touch an interest of the United States within the true meaning of the second paragraph of this article; and (2) that the submission of the question is still insisted upon after attributing to the objections of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council; and if it also appears that the United States has not been able to find the submission of the question so important for the general good as to call upon the United States to forego its objection in that particular instance leaving the request to be acted upon by the Court without in any way binding the United States; then it shall be deemed that owing to a material difference of view regarding the proper scope of the practice of requesting advisory opinions the arrangement now agreed upon is not yielding satisfactory results and that the exercise of the powers of withdrawal provided in Art. 7 hereof will follow naturally without any imputation of unfriendliness or of unwillingness to cooperate generally for peace and good will.

The most important point to note in this paragraph is that it provides for a case which might never arise and that it was intended as an ultimate safeguard to "provide against a very rare and improbable contingency." [1] On

[1] Explanation of Mr. Root, *Minutes*, p. 13.

the basis of his long experience in international affairs, as a delegate to international conferences and especially as Secretary of State, Mr. Root was convinced that in the course of a full and friendly discussion such as he proposed, agreement would always be reached along one of the lines explained in his draft. The privilege of withdrawal would probably never need to be exercised.[1] The nature of the ultimate safeguard through withdrawal is suggested by the provision of Art. 7 of the Preliminary Draft of a Protocol adopted by the 1926 Conference of Signatories, which gave the Signatory States the privilege of restoring the *status quo ante* by withdrawing their acceptance of the American accession.

It is important to note the reason for the possible withdrawal of the United States as clearly described in this original plan. The description is not retained in the Final Draft which will be considered shortly, but is implicit in it, since it constitutes a statement of fact. It must not be erroneously assumed that Mr. Root proposed that we should withdraw from the Court because of a sense of pique over any failure to make our point of view prevail in a specific case or because of annoyance regarding the adoption of some particular request for an advisory opinion. If this were the basis, there might possibly be some justification for the feeling that a withdrawal under these circumstances would place us in an unfavorable light before the public opinion of the world, although this fear would seem to be dispelled by the proviso that the withdrawal would "follow naturally without any imputation of unfriendliness or of unwillingness to cooperate generally for peace and good will." The withdrawal contemplated by Mr. Root as an ultimate though remote safeguard would be due to a more fundamental difference of opinion. He believed that the cooperation of the United States in the work of the Court could be successfully carried on and that through this proposed friendly exchange of views, agreement could always be reached. If this were not the

[1] Explanation of Mr. Root, *Minutes*, p. 15.

case, it might as well be recognized that the proposed collaboration was impossible, "*owing to a material difference of view regarding the proper scope of the practice of requesting advisory opinions.*" In such a situation it would be best for all concerned if we returned to our present situation of a non-participating state.

Such was the nature of the original Root Plan as submitted to the Committee of Jurists on March 11. It has already been noted [1] that the project had already received the informal and general approval of the principal statesmen of Europe and that its basic principles had commended themselves also to certain official persons in the United States. Attention has also been called to the fact that the project was not drafted with the idea that it would form the ultimate text of a treaty. Mr. Root was too experienced in the ways of conferences and committees to ignore the fact that any primary proposal must be redrafted to meet the varying views and suggestions of those concerned. The draft was accordingly considered by him and laid before the Committee of Jurists as a basis for discussion. With this end in view it had been drafted so as to be self-explanatory and it had included details to the ultimate modification or omission of which Mr. Root had not the slightest objection.

One of the first suggestions made in the committee discussions was that of Sir Cecil Hurst which reverted to the 1926 protocol and Secretary Kellogg's note of February 19, 1929, and which proposed that the United States might freely withdraw if any modification were made in the Covenant of the League (presumably regarding unanimity) or in the rules or practice of the Court.[2]

The president, M. Scialoja, was insistent that the committee, under its terms of reference from the Council, should consider specifically Mr. Kellogg's note of February 19, 1929, in order that it might recommend to the Council the

[1] *Supra*, p. 6 [646].
[2] *Minutes*, p. 11.

nature of the reply to be made.[1] M. Gaus and others, however, believed that Mr. Root's proposal would itself contain the basis of a reply and that Mr. Kellogg's note need not be considered separately. This view prevailed.[2]

At the second session a new draft of the proposal prepared by Sir Cecil Hurst was circulated to the committee.[3] Mr. Root declared that, so far as he could see, it "fulfilled exactly the same purpose as his own. The essential point was that the United States should be promptly informed of the intentions of the Council in dealing with any matter in which the former might be interested, and that there should be some kind of informal conference in regard to any concrete case which might arise." [4] Before this Hurst draft was examined, M. van Eysinga of the Netherlands, vice chairman of the committee and formerly the president of the 1926 conference, had suggested that the procedure in Mr. Root's draft might be simplified and he suggested direct notice from the Council to the United States instead of indirect notice through the Court.[5] The Hurst draft, in fact, contained such a suggestion and the idea was acceptable to Mr. Root, who noted that in preparing his own draft he had felt it necessary to avoid any suggestion of interfering with the Council's procedure, but that if the other members felt such an arrangement would be welcome, he was quite willing to accept that arrangement.[6]

As bearing on the likelihood of agreement in an exchange of views with the Council, and on the improbability of withdrawal ever being necessary, it may be noted that the chairman drew attention to the fact that the Council would be most reluctant to take a step of so serious a character as to force the United States to withdraw. He accordingly considered this provision as a "species of sanctions" which would "be a kind of moral pressure on the Council." [7]

[1] *Minutes*, p. 12.
[2] See the Committee Report, p. 134.
[3] *Minutes*, p. 14; the text at p. 16.
[4] *Ibid.*, p. 13.
[5] *Ibid.*, p. 14, where are also the similar views of M. Osusky.
[6] *Ibid.*, p. 14.
[7] *Ibid.*, p. 5.

There was, however, such a very general feeling of assurance that agreement would always be possible that this consideration did not deter the ultimate acceptance of the plan.

The Hurst draft, in the interests of simplification, had combined the first two paragraphs of the Root draft, which, it will be recalled, separated disputes to which the United States was a party from those disputes or questions in which it merely had an interest. M. Raestad expressed himself forcefully as preferring the first form,[1] but the simpler redaction was ultimately adopted. M. Raestad feared that under the Hurst phrasing a situation might arise in which the Council and the United States might disagree and the United States might then withdraw. Subsequently, however, the Court might rule that the United States was a party to or had a legal interest in the dispute and that therefore the opinion could not be rendered. He wished, therefore, to leave the question of competency in the first place to the Court. This proposal failed to take account of what has been said above regarding the real reason for American withdrawal. It would, moreover, put the United States in the position of appearing before the Court as a litigant and then of withdrawing if it were defeated in the litigation. This would indeed be an awkward situation, to which the United States could never assent.

Other proposals were laid before the committee, some in formal drafts and some in informal oral suggestions.[2] The Hurst draft, however, seemed to afford the most satisfactory basis and no other draft was considered in great detail. On the other hand, numerous suggestions were made which were incorporated into the final text.[3] This final text may be studied in comparison with the original Root draft.[4]

[1] *Minutes*, p. 17.

[2] See especially those of M. Politis, *ibid.*, p. 21, and those of M. Fromageot, *ibid.*, p. 81.

[3] See *ibid.*, p. 22; Report of Subcommittee of Four, M. Politis, Reporter.

[4] The text in question is Art. 5 of the Draft Protocol adopted by the committee, *infra*, p. 136. Although Sir Cecil Hurst was designated as reporter to make the final draft, he was instructed to work closely with Mr. Root and as a matter of fact did so.

Instead of following Mr. Root's phraseology by starting with a statement as to what the Court may or may not do, the final text opens with a phrase taken from the fifth reservation itself and serves to emphasize the fact that it is concerned with providing a procedural device. It must be borne in mind that Mr. Root had first submitted a draft covering the second part of the fifth reservation only but that the final Draft Protocol covers all five reservations. The new provisions must therefore be considered with the rest of the protocol in mind, and especially the terms of Art. 1, in which the acceptance of all the reservations "upon the terms and conditions set out in the following articles" is agreed to. The acceptance of the second part of the fifth reservation is thus the underlying fact on which the text now considered hinges. The opening phrase is this: [1]

> With a view to insuring that the Court shall not, *without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.* . . .

The first step in accomplishing this result is for the Secretary-General of the League to inform the United States,

> "through any channel designated for that purpose by the United States," "of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court."

It will be noted that, since the United States may designate the channel of communication, it can have a notification sent to Washington by cable; it can have its minister at Bern informed by telegraph or telephone; or it can have a representative present in Geneva who will receive a written or oral statement. The words "before the Council or the Assembly" were carefully chosen to preserve a certain measure of elasticity. It was realized that it would be unnecessary to put the machinery into

[1] The italics are inserted to show the precise words taken from the fifth reservation.

operation merely because some individual had suggested that he would like to have the Council request an opinion. On the other hand, it would not do to wait till the matter were placed on the agenda of the meeting since a request for an advisory opinion would probably never appear in that form. The agenda would merely include the subject matter of the dispute and the course of the discussion would bring out whether it should be settled by means of a request for an advisory opinion. In the light of the committee discussions it may be said that "before the Council" means "under serious consideration." [1]

The second step is that,

> if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or the Assembly of the League and the United States.

This preserves the essence of the Root Plan. It should be noted that the exchange of views shall take place "if desired," that is, by either party. Frequently and probably usually, the United States would be able to say at once that it had no interest and that discussion was therefor unnecessary. It is also important to note the expressed purpose of the exchange of views. This is not to decide whether the opinion should be requested, but merely whether "an interest of the United States is affected." When this provision is read in the light of Art. 1 which accepts the reservations, and in the light of the opening phrase of this Art. 5 — "with a view to insuring that the Court shall not without the consent of the United States entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest" — the inference is clear that if an interest of the United States is affected, the request will not be transmitted.

The article then continues with a new paragraph based largely on the original Root draft. It was pointed out

[1] *Minutes*, p. 77–79.

in the committee [1] that the Council sessions usually last only a week and that in a serious emergency it might be necessary for the Council to take some action before it would be possible to complete an exchange of views. The draft accordingly provides a solution for this difficulty. It requires the Registrar to notify the United States whenever a request for an advisory opinion comes to the Court. Like the Root draft it also emphasizes and crystallizes the present practice of the Court by a reference to Art. 73 of the Rules regarding notice and the fixing of a reasonable time limit within which a written statement by the United States will be received. The article of the Draft Protocol continues:

> . . . If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded, and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

Although this proviso is designed to cover especially the emergency just described, it is couched in general terms and thus affords the United States an additional safeguard in every case.

The next paragraph goes back to the idea contained in Art. 4 of the protocol of 1926, which was also incorporated in the original Root draft. It reads as follows:

> With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attached to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

This provision, it will be recalled, was originally adopted to afford a way out of the unsolved problem of unanimity

[1] See *Minutes*, p. 21, and Sir Cecil Hurst's Report, Hudson, *World Court*, p. 198.

or majority. In view of the other provisions in this new plan, this is no longer of vital importance, but at the same time it does give the United States one more safeguard. From the phraseology it will be apparent that both the Council and the Court must attribute this weight to the vote of the United States, since the text clearly refers to the preceding "paragraphs," one of which deals with the Council and the other with the Court. The Council might decide a majority vote was sufficient and transmit the request over the objection of the United States. The Court would then have to rule on the point and if it decided unanimity was necessary it would be forced to decide that the request was improperly before it and could not be answered. It is true also that, even if in some cases a majority vote was sufficient, the vote of the United States might turn a minority into a majority. In any event, we are assured a position of strict legal equality with the Members of the Council and Assembly and that without the correlative assumption of any of their obligations. Meanwhile, the fact that this safeguard is, while valuable and important, only subsidiary to the main plan, has made unnecessary the probably futile attempt to secure at this time a definitive interpretation of Art. 5 of the Covenant.

The last paragraph of this article in the Draft Protocol does not differ substantially from the corresponding part of Mr. Root's original draft, which provided for ultimate withdrawal, except that it is more condensed and does not fully state all the factual situations which Mr. Root found it appropriate to list in a preliminary proposal. It reads as follows:

> If, after the exchange of views provided for in pars. 1 and 2 of this article, it shall appear that no agreement can be reached, and the United States is not prepared to forego its objection, the exercise of the powers of withdrawal provided for in Art. 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to cooperate generally for peace and good will.

Attention is drawn to the fact that it is not only the United States which might withdraw in case of a disagreement. As in the Root draft, the words are "the powers of withdrawal provided for in Art. 8" and Art. 8, like Art. 7 of the 1926 protocol, provides for the withdrawal of the United States and of the other Signatory States.[1]

Since, as already noted, the acceptance of the fifth reservation is the basis for this whole article, and in view of the other points just elaborated, it would seem that no request for an advisory opinion could be entertained by the Court without the consent of the United States while this protocol is in force. In the improbable case of disagreement with the Council, for the reason already indicated, the United States would no doubt wish to withdraw from the whole arrangement, but on the other hand if the United States chose to stand on its objection, it would appear that proceedings in the Court would be stayed until the other parties exercised their rights under Art. 8 and brought the protocol to an end. This would throw upon them the *onus* of dissolving the partnership, but in reality there would be practically no factual difference. As M. Scialoja pointed out,[2] the Council would always be very slow to disagree with the United States, since the disagreement would probably cause American withdrawal. It is scarcely conceivable that a group of expert statesmen would not in such a situation find some different method of solution which would avoid such a calamity. A reframing of the form of submission or the putting forward of a different legal angle involved in the dispute would probably suffice to eliminate any American objection.

It has been suggested [3] that under the Root Plan, a veto power which would have been obtained under the fifth reservation has been abandoned. This statement requires analysis. In the first place, the theory of a veto power seems to have been based on the use of the words "claims

[1] This fact is not made clear in the Committee's Report; see Hudson, *op. cit.*, p. 198.

[2] See *supra*, p. 50 [690].

[3] *Minutes*, p. 20; see also Hudson, *American Reservations*, p. 13.

an interest." It was felt that a mere "claim" by the United States would be sufficient to block any opinion. But there are other words in the reservation. The claim of interest is sufficient to block the opinion if it is one "touching any dispute or question" in which that interest or alleged interest is involved. The reservation does not say it is sufficient if we "claim" that it touches such a matter. This is therefore a question of fact or of law for which the reservation provided no method of solution. It would seem that, if the Signatory States had in the first instance flatly accepted the fifth reservation, the following situation might have resulted: The Council would transmit a request to the Court. The United States would inform the Court that it claimed an interest. The Court, as a judicial body, acting in accordance with the treaties which govern its jurisdiction would say, even though that be true, where is the proof that this dispute or question "touches" that interest which you claim? The United States would have then been compelled to submit arguments to the Court, to explain and define the interest, and to allow the Court to pass upon it. This was just the result which the reservation intended to avoid, but to which it would almost certainly have led. The new protocol or Root Plan, therefore, not only fully protects every possible interest of the United States, but goes further in that direction than the reservation itself. Of course, under the withdrawal provisions, the power of control vested in the United States would cease when the protocol is terminated but no reservations which are always ultimately parts of a treaty can survive the existence of the treaty to which they are attached. One may echo the hope expressed in the report of the committee, that if any withdrawal ever materializes "it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement." [1]

[1] Hudson, *World Court*, p. 198.

III. PROPOSED AMENDMENTS TO THE STATUTE

When the Assembly, on September 20, 1928, adopted its resolution looking toward the revision of the Statute, it was made clear that there was "no question of recasting the Statute of the Court or of actually revising it. All we are proposing is that it should be examined with a view to remedying such defects as experience may have brought to light, and introducing amendments which could be effected by general agreement without undue delay." [1] For this reason, the proposal of M. Pella, the Rumanian delegate, to confer on the Court certain powers in penal matters was rejected. The Committee of Jurists fully recognized this limitation on the scope of its activities.[2]

The recommendations of the committee may be considered under the headings found in its report.[3]

Certain preliminary matters are first dealt with in the report. Among these is the question of the qualification of judges. Art. 2 of the Statute now requires them to be "persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law." [4] M. Fromageot (France) believed that the word "competence" did not necessarily include practical experience and he wished to see this quality included among the required attributes.[5]

[1] Statement of René Cassin, rapporteur for the First Committee of the Assembly, *Records of the Ninth Ordinary Session of the Assembly*, p. 110, col. 2. For a discussion of the wisdom of proceeding to secure amendments to the Statute by this method without first obtaining the views of the Court, see the illuminating article by Mr. Hammarskjöld, Registrar of the Court, in *Revue de Droit international et de Législation comparée*, 1928, No. 6, p. 5 *ff.* at p. 7–9 and 17 *ff.* This article also includes valuable comments on some of the substantive changes discussed in the committee.

[2] *Minutes*, p. 24; also Committee Report, *infra*, p. 105 [745].

[3] League Document, C. 142. M. 52. 1929. V. 4; also *infra*, p. 104 [744]. The conference at Geneva, September 4–12, 1929, and the Assembly of the League of Nations approved the report of the Committee with only slight changes.

[4] *Infra*, p. 83 [723].

[5] *Minutes*, p. 24.

It was also proposed that every judge should have some familiarity with the official languages of the Court — French and English. Not only for the examination of the often voluminous records and pleadings submitted to the Court and for the understanding of the oral arguments, but also particularly for the Court's own private consultations, such a language requirement would seem to be essential. On the other hand, the committee felt it would be undesirable to lay down so strict a rule on this point as to exclude from the bench persons otherwise highly qualified to serve upon it. Accordingly it was finally decided to specify a reading knowledge of both the official languages and a speaking knowledge of one of them.[1]

It was at first suggested that Art. 5 of the Statute, which describes the manner of nomination, should be amended to include a definite requirement that each nomination should be accompanied by a statement indicating that the nominee possessed the required qualifications.[2] An alternate suggestion was for the amendment of Art. 8 dealing with the method of election, to provide an opportunity for speeches in support of the candidates.[3] The President pointed out, however, that this might result in an election being based on the eloquence of the advocate rather than on the merits of the nominee.[3] It was eventually decided that the best plan would be merely to advise that the Assembly approve the following recommendation:[4]

The Secretary-General, in issuing the invitations provided for in Art. 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognized practical experience in international law and that they are at least able to read both the official languages of the Court and to

[1] See Committee Report, *infra*, p. 106 [746]; *Minutes*, p. 87–90, especially the statement of M. Anzilotti, President of the Court, p. 88.

[2] *Minutes*, p. 25.

[3] *Ibid.*, p. 26.

[4] Committee Report, *infra*, p. 106 [746]; also *Minutes*, p. 26, 39, 87–90; the compromise formula finally adopted was suggested by Mr. Root, *ibid.*, p. 27.

speak one of them; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.[1]

Composition of the Court

Many of the suggestions of the committee are based on a desire to improve the organization of the Court with a view to enabling it more easily to handle the steadily increasing volume of business confided to it. As Mr. Root has pointed out, when the Committee of Experts of which he was one framed the Court Statute in 1920, they were treading new paths and could not foresee the extent to which the new Court would be used. The committee of 1929, therefore, had to apply "the lessons, not of failure, but of success." [2]

With regard to the composition of the Court, the first matter considered was the position of deputy-judges. Art. 3 of the Statute now provides that the Court shall be composed of eleven regular judges and four deputy-judges. The committee decided that the class of deputy-judges should be abolished. M. Fromageot explained why this should be done.[3] The function of a deputy-judge was to act when a sufficient number of regular judges was not available to constitute a quorum. If it were inconvenient for a regular judge to attend a session, particularly if his home were at a great distance from The Hague, the realization that a deputy-judge was available to take his place might dissuade him from making a special effort to be present. But the need for having deputy-judges immediately available made it almost essential to elect to this position only persons residing reasonably

[1] The 1929 conference made this recommendation even milder, asserting its approval of the ideas but merely suggesting that the recommendation be transmitted to the Assembly "in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups." The resolution adopted by the Assembly associates that body with the recommendation, which will be referred to by the Secretary-General in notices to the nominating groups. See *Report of the First Committee to the Assembly* (M. Politis, rapporteur) September 13, 1929, League Doc. A. 50. 1929. 5, p. 4, and *infra*, note p. 98 [738] (hereinafter referred to as "Report of First Committee, 1929").

[2] Prepared statement to the Press, Geneva, March 20, 1929.

[3] *Minutes*, p. 27.

near The Hague. This created a tendency to choose only Europeans, thus creating a privileged situation in their favor.[1] Furthermore, regular judges are placed under certain disabilities as to the activities in which they may engage,[2] while this restriction is not and could not fairly be imposed on the deputy-judges. Yet when sitting on the bench, both groups of judges are on a footing of equality; this did not seem an advantageous situation. In the words of the committee report, "practical experience thus points to assimilation of the two classes of judges and accordingly suggests the desirability of abolishing the deputy-judges and replacing them by an equal number of ordinary judges." [3] Art. 3 of the Statute now also provides that the number of judges and deputy-judges might be increased by the Assembly, on the proposal of the Council, to a total of fifteen judges and six deputy-judges. Since under the new amendment, this maximum number would be reached, the committee recommended omitting in this article all reference to increasing the bench. The new Art. 3 would thus read : "The Court shall consist of fifteen members." This abolition of deputy-judges of course would make necessary changes in other articles where they are referred to, but this being a matter of detail, it is not considered here.[4]

Permanent Functioning of the Court [5]

In noting the suggested abolition of the deputy-judges, it has been indicated that the need was felt for having the judges more readily available for service. Art. 23 of the Statute now provides that the Court shall hold a regular

[1] One of the present deputy-judges, however, is Wang Chung-hui of China.

[2] See Arts. 16 and 17 of the Statute, *infra*, p. 87 [727].

[3] *Infra*, p. 106 [746].

[4] The articles of the Statute affected are 8, 15, 16, 17, 25, 31 and 32; see Committee Report, *infra*, p. 107*ff*. [747*ff*.]. The proposed redraft of Art. 3 was accepted without change; see *Report of First Committee, 1929*, p. 2; *infra*, p. 83 [723].

[5] This is not the next subject in order in the committee report, which follows the order of the articles of the Statute. It seems, however, more convenient to shift the order here in order to draw together closely related matters.

session on June 15 of each year and that extraordinary sessions may be called if necessary. Up to June, 1929, the Court had held seven ordinary and nine extraordinary sessions.[1] This volume of business was far greater than had been anticipated when the Statute was framed in 1920 and it was probably for this reason that no requirement was laid down regarding the residence of the judges near the seat of the Court. In view of the experience of the Court, it seemed to the committee that this situation should be altered.[2] It was realized, however, that judges from non-European countries might be placed under a disadvantage if required to reside near The Hague and special provisions were made for such persons. [3]

The committee's final conclusion, after much discussion of detail, was that the Court should remain constantly in session except for judicial vacations and that the members of the bench should be continuously at the disposal of the Court. These provisions are all included in the suggested redraft of Art. 23 of the Statute, which is as follows: [4]

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

[1] See *Fifth Annual Report of the Court*, Series E, No. 5, p. 167.

[2] Committee Report, *infra*, p. 110 [750]; *Minutes*, p. 28 *ff.* and 34–36.

[3] M. Urrutia, of Colombia, especially called attention to this situation; *Minutes*, p. 29–36.

[4] Committee Report, *infra*, p. 111 [751]. The conference made the following changes in the above text: At the end of the first paragraph the words "at the end of each year for the following year" are omitted. At the end of the second paragraph the following words are added: "not including the time spent in traveling." See *Report of First Committee, 1929*, p. 2; *infra*, p. 110 [750].

Functions and Occupations Incompatible with Membership of the Court

At the present time, under Arts. 16 and 17 of the Statute, the judges are permitted to carry on private occupations so long as they do not violate the express prohibitions against exercising political and administrative functions or taking part in international cases as agent, counsel or advocate. Not only were there certain fundamental objections to this activity of the judges, but it would evidently be impossible under the proposed new arrangement whereby the Court would be practically in continuous session.

Although the committee members were in agreement that some further restrictions on the outside activities of the judges were necessary, there were long debates as to the framing of an appropriate text. M. Fromageot proposed excluding them from any activity except that of serving as a judge of the Permanent Court of Arbitration.[1] Mr. Root opposed this suggestion on the ground that it was too broad. He felt that the caliber of man needed on the Court was one who would resent these restrictions on his liberty which would make him feel that he was "returning to a state of tutelage resembling that of a schoolboy." [2] Having already required the judges to be constantly available for the work of the Court, something, in Mr. Root's opinion, might be left to their own good judgment and conscience.

M. Fromageot agreed that perhaps his draft had been too broadly phrased, but felt that the occupation of barrister before national tribunals, for example, was incompatible with the function of a judge on the Permanent Court of International Justice. He also felt that a judge should not continue to act as a university professor, since in his lectures he would become known as favoring certain views and doc-

[1] *Minutes*, p. 42.
[2] *Ibid.*, p. 43.

trines which would consequently incline him to judge certain cases in a particular way.[1] As the result of further discussion, the phrase ultimately adopted for insertion in Art. 16 provides that a judge shall not "engage in any other occupation of a professional nature." [2]

Manner of Forming the Court

Another problem developing from those already discussed was that of the size of the Court. Sir Cecil Hurst suggested an amendment which would provide that so long as the number of judges was not reduced below eleven, the Court, by its rules, could provide that one or more judges should be from time to time relieved from sitting.[3] Mr. Root supported this idea, urging that fifteen was too large a number to have on the bench at one time. He suggested the adoption of a scheme of rotation based on the plan in force for the courts of New York State for over 30 years.[4] This system enabled a judge, while not sitting on one case, to be at work upon a case which he had previously heard. The result would be an economy of time and effort and a remedy for the disadvantage attendant upon having too large a bench. Although it was noted that some difficulty might be experienced in applying this system to an international court,[5] the suggestion was finally adopted in the following new redaction of Art. 25: [6]

[1] In response to a question from the president, M. Fromageot stated that a man should not be excluded from the bench because he had written a book on international law, *ibid.*, p. 43; see also further discussion, p. 44–45.

[2] Committee Report, *infra*, p. 108 [748]; which see for comments and slight drafting changes in Art. 17. The conference adopted and the Assembly approved the phrase proposed by the Committee of Jurists on the understanding that it was "to be interpreted in the widest sense, *i.e.*, cover, for example, such an activity as being director of a company." The conference also slightly altered the new phrasing of Art. 17. See *Report of First Committee, 1929*, p. 2; *infra*, p. 87 [727].

[3] *Minutes*, p. 70, 74.

[4] *Ibid.*, p. 74.

[5] *Ibid.*, p. 74. See also statement in the Report that the committee of course intended that the application of this provision should never be such as to give grounds for suspicion that the Court has been specially composed in a given case for the purpose of affecting the decision of that case.

[6] Committee Report, *infra*, *p.* 111 [751]. The article was approved without change; *Report of First Committee, 1929*, p. 2; *infra*, p. 89 [729].

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

Resignation of a Judge

Quite a separate problem was the question of the resignation of a judge. The Statute at present contains no provision on the subject and when Judge Moore resigned he submitted his resignation through the Secretary-General to the Council and Assembly, but it was difficult to say whether a vacancy could be considered to have occurred before acceptance of the resignation by those bodies. It was considered desirable to remedy the omission by supplying a regular procedure.[1] The procedure adopted is for the judge to address his resignation to the President of the Court for transmission to the Secretary-General, the notification thus effected making the place vacant.[2]

Filling of Occasional Vacancies

A somewhat similar problem was that of filling occasional vacancies caused by death or resignation. Art. 14 of the Statute provides that such vacancies shall be filled in the same manner as provided for regular elections. But such elections are by the Assembly and Council and the former body meets only once a year in September. Since invitations to make nominations must, under Art. 5 of the Statute, be sent out at least three months prior to an election, it is obvious that a vacancy might exist for 15 months.[3] M.

[1] *Minutes*, p. 46.

[2] Committee Report, *infra*, p. 107 [747]; adopted with only a slight verbal change; *Report of First Committee, 1929*, p. 2; *infra*, p. 86 [726].

[3] See the statement of M. Fromageot, *Minutes*, p. 37. M. Fromageot called attention to the fact that Judge Weiss died in September, 1928, and that his place could not be filled till the meeting of the Assembly in September, 1929.

Fromageot suggested that perhaps an extraordinary session of the Assembly might be convened for the purpose of holding an election, but doubted the need for such action unless at least two vacancies occurred.

On this point the committee consulted the Secretary-General of the League, who expressed the opinion that this solution would present little real difficulty. If the Assembly were to act only on this one matter, it would be unnecessary for the states to send special representatives, since they could designate their diplomatic representatives in Bern or some other European capital.[1] The committee accordingly adopted the suggestion in the following form:[2]

> Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Art. 5, and the date of the election shall be fixed by the Council at its next session.

Salaries of Judges

In line with the new provisions calling for more frequent sessions of the Court and more constant attendance of the judges, it was considered appropriate that the compensation of the judges should be increased. It had been found by experience that the arrangement now laid down in Art. 32 of the Statute for a fixed salary plus certain per diem allowances had caused great difficulties of administration and it was therefore proposed to give only a fixed annual salary of 45,000 florins — about $18,000. As before, the President and Vice-President would receive additional grants. The Statute empowers the Assembly to fix the compensation of the members of the Court so that this part of the committee's work takes the form of a suggested draft resolution of the Assembly, in addition to

[1] See the statement of M. Fromageot, *Minutes*, p. 37.

[2] Committee Report, *infra*, p. 107 [747]. The text was adopted as proposed by the committee; *Report of First Committee, 1929*, p. 2; *infra*, p. 86 [726].

the necessary changes in the text of Art. 32 of the Statute.[1] It should be noted that this amendment includes the provision that the remuneration received by the members of the Court "shall be free of all taxation." This being included in the Statute and thus forming part of a treaty would impose on all Signatory States a conventional obligation to grant exemption from such taxation.

National Judges

Under Art. 31 of the Statute, whenever the Court includes on the bench a judge of the nationality of only one of the parties to a case the other party is entitled to appoint one of its nationals to sit as a judge *ad hoc*. The committee felt that it should not interfere with this system, but recommended that it should be extended to the special Chambers of the Court for Labor, Communications and Transit, and Summary Procedure.[2] But with regard to this subject an interesting debate occurred. At the eleventh session, Sir Cecil Hurst raised the question of the status of the British Dominions.[3] He pointed out that the British Empire is a political unit of an exceptional type and called attention to the fact that the Dominions and Great Britain were separate Members of the League. He wished to be assured that all the members of the committee agreed that for the purpose of applying Art. 31 of the Statute, citizens of the Dominions were to be considered as having a nationality separate from that of Great Britain. Thus, if a case came before the Court involving Australia and Japan, under Sir Cecil's interpretation, the presence of an English judge on the bench would not prevent Australia from appointing a national judge *ad hoc*.

[1] See Committee Report, *infra*, p. 115 [755]; see *Minutes*, p. 55 *ff*. The schedule proposed was adopted by the Council and will be budgeted by the Assembly of the League in 1931; see resolution *infra*, note, p. 95 [735].

[2] Committee Report, *infra*, p. 112 *ff*. [752 *ff*.]; see *Minutes*, p. 53; adopted without change; *Report of First Committee, 1929*, p. 2; *infra*, p. 90 [730].

[3] *Minutes*, p. 70.

At this session only two members of the committee expressed any view on this theory. M. Raestad of Norway stated that Sir Cecil Hurst's interpretation seemed to be the logical one.[1] But M. Politis took vigorous exception. He considered it a matter of the highest importance which could not be disposed of by a mere interpretation.[1] Sir Cecil also responded with some force, but there the matter rested,[2] the committee passing on to another matter.

At the fourteenth session Sir Cecil raised the question again.[3] He stated that he had understood from the previous discussion that the committee, with the exception of M. Politis, shared his view, but it appeared that M. Politis believed that all but Sir Cecil and M. Raestad agreed with him. Sir Cecil accordingly made a careful technical argument based on various articles of the Statute and the distinction between "states" and "Members of the League of Nations," both of which may be parties before the Court. He asked that his interpretation be mentioned in the committee's report, but did not propose any amendment to the Statute.

M. Politis replied by saying that the adoption of such an interpretation would certainly prevent small states such as his own (Greece) from accepting the Optional Clause for the compulsory jurisdiction of the Court. He also opposed Sir Cecil's theory on legal grounds and asked that, if the committee inserted that interpretation in its report, it should also insert his formal reservations thereto.

M. Fromageot felt that the adoption of Sir Cecil's theory would open the door to grave abuses, while the acceptance of M. Politis' view would be a grave injustice to the Dominions. He, therefore, proposed a middle way whereby cases would be differentiated into those which concerned the whole Empire and those which concerned one Dominion only. But, in any case, M. Fromageot felt that any such attempt to interpret the Statute in advance of an actual

[1] *Minutes*, p. 71.
[2] *Ibid.*, p. 71–72.
[3] *Ibid.*, p. 84–87.

case arising would be outside the scope of the committee's functions.

M. Raestad then reaffirmed his agreement with Sir Cecil's position and expressed strong disapproval of M. Fromageot's compromise proposal.

M. Ito of Japan stated that the composition and status of the British Empire always perplexed him and that he did not wish to commit himself on the merits of the proposition. He believed, however, that this was not a matter on which the committee could pass judgment.

The only other speaker was M. Gaus of Germany who, while agreeing that the committee should not deal with the question at all, stated that he did not share the view of Sir Cecil Hurst as to the correct interpretation of the Statute.

In view of this divergency of opinion, the Vice-President, who was then in the chair, declared that the discussion should be closed. The only conclusion that one can reach from the discussion is that the matter was raised but not passed on by the committee. The views of the individual legal experts as to the correct interpretation of the Statute in this respect are of course most interesting but can not be taken as foreshadowing an ultimate decision either way. Probably the ultimate solution will not be reached for the time being. In this connection it may be noted that the United States has to a certain extent recognized the separate personality of the Dominions by exchanging ministers with Canada and with the Irish Free State.[1]

Advisory Opinions

One of the recommendations of the Committee of Jurists is of especial interest in connection with the accession of the United States. This recommendation is for the incorporation into the Statute of a new Chap. IV, dealing with advisory opinions. The Statute at present contains no reference to this part of the Court's jurisdiction and the Court has accordingly had to supply the deficiency by

[1] *Minutes*, p. 87.

framing appropriate rules. Many of the provisions of these rules contain matters analogous to those which, with respect to contested cases, are already in the Statute. It was accordingly proposed to transfer bodily into the Statute the appropriate provisions of the existing Rules.[1] The committee was throughout solicitous to avoid infringing upon the prerogatives of the Court in framing the rules of its own procedure, but M. Anzilotti, the President of the Court, on his own behalf and on that of M. Huber, the Vice-President of the Court, stated that they had no objection to the proposal.[2] It was pointed out by M. Huber that one reason for omitting reference to advisory opinions in the original Statute was the absence of any experience as to how this activity of the Court would operate, but this reason did not apply now after eight years of experience.[3] It was also noted that the proposal would be advantageous in connection with the anticipated accession of the United States.

In the discussions of the committee it became apparent that it would be useful to add to the rules which it was proposed to insert in the Statute a general article which would serve as a guide to the Court in exercising its advisory functions. Thus where an opinion was requested regarding an actual dispute, certain articles of the Statute would be applicable which it would not be appropriate to apply when the Court gave an opinion on a noncontentious question.

Thus, omitting matters which it was thought more proper to leave in the regulatory powers of the Court, the committee suggested inserting in the Statute four new articles, the first three of which correspond closely to Arts. 72, 73 and 74 of the Rules of Court, providing in particular for publicity and hearing in connection with advisory opinions. It is scarcely necessary to add that the adoption of this amendment would give complete sat-

[1] The discussion of the matter was opened by M. van Eysinga in the eleventh session; see *ibid.*, p. 66.

[2] *Ibid.*, p. 67.

[3] *Ibid.*, p. 68.

isfaction to the first part of the fifth reservation of the United States.[1]

Other Matters

In addition to what has been noted above, the committee made several other recommendations. With regard to the various special Chambers of the Court — for Labor cases, for Transit and Communications cases and for Summary Procedure — several drafting changes are advocated. For the first two it also made provision for summary procedure and to the Summary Procedure Chamber itself it made applicable the provisions of Art. 31 regarding national judges.[2]

Drafting amendments were also adopted for Arts. 38, 39, 40 and 45.[3] With regard to Art. 35, which provides that the Court may fix the amount of the contribution which should be paid by a state party to a dispute before the Court, but not a Member of the League, the committee thought no amendment necessary, but noted in its report that the third reservation of the United States would make this article inapplicable to that state if it should accede.[4]

[1] See Committee Report, *infra*, p. 119 [759]. In transferring the articles of the Rules into the Statute the Committee of Jurists omitted in the new Arts. 66 and 67 that part of the Rules which requires notice to interested international organizations as well as to interested States. The attention of the conference was called to this omission by the International Labor Office (League Doc. A. 22. 1929. V), which pointed out that with regard to advisory opinions concerning labor questions it seemed highly desirable to continue the present practice of the Court, whereunder notice is given to the International Labor Office. The conference accordingly restored these words in the new text. There is also a slight change in the wording of the new Art. 68 relative to the Court's cross-reference to other articles of the Statute. See *Report of First Committee, 1929*, p. 2; *infra*, p. 101 [741].

[2] *Ibid.*, p. 115 [755].

[3] *Ibid.*, p. 118 [758].

[4] Committee Report, *infra*, p. 117 [757]. This point was considered by the conference in the light of a communication from the Brazilian delegate. Brazil having withdrawn from the League, but having advised the Secretary-General that it desired to contribute to the expenses of the Court, wished to secure an arrangement permitting it to participate in elections. The conference proposed an amendment to Art. 4 providing that, "in the absence of a special agreement" (*e.g.*, such as that proposed with the United States), the Assembly should, on the proposal of the Council, lay down the conditions under which a state not a Member of the League might participate in the elections. As to Art. 35, the conference preferred to put into the text of the article the point suggested by the Committee in its report. It therefore recommended a new sentence in that article, to the effect that the Court's power to fix the contribution of a State not a Member of the League should not apply if such State "is bearing a share of the expenses of the Court." (*Report of First Committee, 1929*, p. 3; *infra*, p. 96 [736].)

Two other matters should be noted which were discussed but rejected by the committee and therefore do not appear in the report.

M. Fromageot proposed that the practice of rendering dissenting opinions should be abolished. In so doing he was merely advocating the continental European system in which the decision always appears merely as the judgment of the Court without any expression of opinions of individual judges, in place of the Anglo-American practice now actually in force in the Court.[1] M. Fromageot thought the continental system would give greater weight to the decisions of the Permanent Court of International Justice.

Sir Cecil Hurst and Mr. Root opposed this suggestion with great vigor, the former stating that "the effect of that proposal would be to destroy the Court." [2] Mr. Root felt that such a change would run counter to the whole modern trend of international affairs, which is moving in the direction of greater publicity. He also felt that in such a Court, no judge would be willing to "rest under an imputation of acquiescing in views which he did not hold" and that their dissenting opinions would thus come out privately. He felt that respect for, and the authority of, the Court "could not be founded on any suppression of the facts." He, too, felt that the suppression of dissenting opinions would be "disastrous." [3] M. Politis, M. Huber and M. Anzilotti, while trained in the continental school, rallied to the view of their English and American colleagues and M. Fromageot withdrew his proposal.

The other point of interest was the suggestion of M. Urrutia that Art. 34 of the Statute should be amended to make clear that the League of Nations as a judicial personality could be a party in a case before the Court.[4] This suggestion, of course, raised interesting questions as to

[1] *Minutes*, p. 50 *ff.*
[2] *Ibid.*, p. 50.
[3] *Ibid.*, p. 51.
[4] *Ibid.*, p. 57.

the nature and status of the League. It was noted that the League might be involved in a dispute with Switzerland as to its buildings or real property or it might be involved in a "public" dispute with a state. Mr. Root pointed out [1] that this was such an important and complex matter that a hasty decision in the limited time available to the committee would hardly seem proper. In view of these considerations and the great variety of views expressed by the members of the committee, it was thought best to leave Art. 34 unchanged in this respect.

There was a further matter on which the committee did not take action, but which gained added attention subsequently. M. Rundstein submitted a memorandum advocating the extension of the jurisdiction of the Court as a court of appeal.[2] Although the memorandum contained detailed proposals, M. Rundstein stated that he did not propose to have it discussed by the committee and he accepted the vice-chairman's suggestion that it be transmitted with the covering letter from the Committee to the Council.[3]

The same idea was adopted in a resolution of the Assembly on a proposal of the Government of Finland.[4] Again there was no suggestion for immediate consideration, but only for examination by the Council. It must be noted that the question involves some political complications, because of the situation now existing regarding the review of decisions of some of the Mixed Arbitral Tribunals of which so many are now set up in Europe.[5]

Procedure on Amending the Statute

Attention has already been drawn to the fact that at its June session the Council decided to convene a con-

[1] *Minutes*, p. 60.

[2] See *Minutes*, Annex 6, p. 105.

[3] *Minutes*, p. 75.

[4] *Journal of the Tenth Assembly*, September 26, 1929, No. 22, p. 390.

[5] See, for example, the Hungarian-Rumanian dispute; see Deák, *The Hungarian-Rumanian Land Dispute* (1928), especially p. 77 *ff.*

ference of the Signatory States to meet in Geneva in September to consider these proposed amendments to the Statute.[1] As regards the United States, it is of interest to note the possible eventualities and the relation of these amendments to American accession.

Two contingencies are possible: in the first place, the various Signatory States may ratify the protocol for American accession before the amendments are ratified. In that case, the United States would itself be one of the contracting parties whose consent would be necessary before the amendments could take effect. In this situation the United States Senate would be called upon to pass on the amendments — which seem to offer no objectionable feature from the American standpoint — but this action would be wholly independent of the question of the accession of the United States to the Court.

In the second place, ratification of the protocol for American accession may not be completed before the amendments to the Statute are ratified by the present Signatory States and thus have come into force. In such a case the treaty to the ratification of which the Senate has given its consent, subject to the five reservations, would no longer be in existence, having been replaced by a new treaty, though, to be sure, the new treaty would be merely a modified form of the old one. The President would then have to submit this new treaty to the Senate, together with the protocol for American accession and ask anew for advice and consent to ratification. Since, however, the amendments would appear to be unobjectionable to the United States, this would not seem to present any new political obstacle.

With a view to avoiding the difficulties inherent in this situation, an ingenious plan was proposed. The conference suggested [2] that three instruments would be presented to the United States for its acceptance, namely: (1) The

[1] The conference met September 4–12, 1929; its activities have been alluded to above.

[2] See letter from the President of the conference to the First Committee of the Assembly, *infra*, p. 127 [767].

Protocol of Signature of 1920; (2) the Protocol regarding American Accession; and (3) the Protocol of Amendments. It was stated that "while it is of course not within the province of the . . . Conference to anticipate what procedure the United States may follow, it may be hoped that the United States will in due course sign and ratify all three above-mentioned instruments."

The form in which the matter is presented is as follows: [1] The amendments are set forth in an annex to a Protocol which declares that the signatories agree to the amendments thus set out. The Protocol is open for signature by the signatories of the original Protocol of Signature of December 16, 1920, and by the United States. The Protocol is to be ratified, but it will enter into force on September 1, 1930, "provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and states mentioned in the Annex to the Covenant which have ratified the Protocol of December 16, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol." For this purpose the United States "shall be in the same position as a state which has ratified the Protocol of December 16, 1920." This is a generous concession to the American Government, enabling it to have a voice in the adoption of the amendments regardless of any delay which might be incidental to securing general ratification of the Protocol of American Accession. It is further stipulated that "after the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920." "After the entry into force of the present Protocol, any acceptance of the Statute of the

[1] See League Doc. A. 50 (Annex). 1929. V. 16, and *infra*, p. 124 [764].

Court shall constitute an acceptance of the Statute as amended." [1]

This arrangement, contemplating that a treaty may come into force through failure to object, is rather novel and, if successful, may prove a useful precedent for the future. It is inspired by the necessity for quick action. It presents some possible difficulties. The Protocol of Signature of 1920 is a treaty and can be amended only by unanimous consent.[2] If a state whose constitutional system requires parliamentary approval for ratification signs the new Protocol but thereafter remains inactive and silent, can it be said that it has approved the amendments? If not, are the amendments effective? Can the state be bound by the signature of an agent, who under the national law of the state *ex hypothese* is not authorized so to bind the state? In practical effect, however, it is probable that if such a situation should develop, the executive branch of such government would inform the Council that due to the failure to secure timely ratification, it must be considered as objecting to the coming into force of the amendments on the date specified. So far as the Government of the United States is concerned, it would seem unlikely that that Government would care to exercise its privilege of blocking the amendments unless it first ratified the Statute.

The form in which the whole subject will be submitted to the Senate must be a matter of surmise. The simplest procedure would seem to be to follow the suggestion of the conference and to submit all three Protocols to the Senate. On the other hand, the Senate Resolution of January 27, 1926, might be construed as carrying consent to ratification of the Protocol of Signature of December 16, 1920, provided that the Senate gave its consent to the new Protocol of American Accession to fill the requirement of the five reservations. Unless the amendments are defeated

[1] Similarly, under Art. 6 of the Protocol of American Accession, any future signature of the Protocol of 1920 is declared to be an acceptance of the former Protocol as well.

[2] *Cf. supra*, p. 23 [663].

by the opposition of some state or states, consent to ratification of the 1920 Protocol would be illusory. Since any Senate debate on the Court would almost inevitably involve a consideration of the proposed amendments, it would seem likely that the two issues would not be separated in submission to that body.

APPENDIX I

DOCUMENTS CONCERNING THE COURT

STATES WHICH HAVE SIGNED THE PROTOCOL OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

(As of October 1, 1929)

States Signatory	Date of Ratification	States Signatory	Date of Ratification
Abyssinia	July 16, 1926	Irish Free State	Aug. 21, 1926 [3]
Albania	July 13, 1921	Italy	June 20, 1921
Australia	Aug. 4, 1921	Japan	Nov. 16, 1921
Austria	July 23, 1921	Latvia	Feb. 12, 1924
Belgium	Aug. 29, 1921	Liberia	
Bolivia		Lithuania	May 16, 1922
Brazil	Nov. 1, 1921	Luxemburg	
Bulgaria	Aug. 12, 1921	Netherlands	Aug. 6, 1921
Canada	Aug. 4, 1921	New Zealand	Aug. 4, 1921
Chile	July 20, 1928	Nicaragua	
China	May 13, 1922	Norway	Aug. 20, 1921
Colombia		Panama	June 14, 1929
Costa Rica		Paraguay	
Cuba	Jan. 12, 1922	Persia	
Czechoslovakia	Sept. 2, 1921	Peru	
Denmark	June 13, 1921	Poland	Aug. 26, 1921
Dominican Republic [1]		Portugal	Oct. 8, 1921
		Rumania	Aug. 8, 1921
Estonia	May 2, 1923	Salvador	
Finland	April 6, 1922	Serb-Croat-Slovene State	Aug. 12, 1921
France	Aug. 7, 1921	Siam	Feb. 27, 1922
Germany	March 11, 1927	South Africa	Aug. 4, 1921
Great Britain	Aug. 4, 1921	Spain	Aug. 30, 1921
Greece	Oct. 3, 1921	Sweden	Feb. 21, 1921
Guatemala [2]		Switzerland	July 25, 1921
Haiti	Sept. 7, 1921	Uruguay	Sept. 27, 1921
Hungary	Nov. 20, 1925	Venezuela	Dec. 2, 1921
India	Aug. 4, 1921		

Total — 54

[1] National Congress approved the signature December, 1926.

[2] Signed at Geneva, December 17, 1926.

[3] Letter notifying "that the Irish Free State is to be included among those Members of the League of Nations which have ratified."

OTHER STATES TO WHICH THE COURT IS OPEN

Afghanistan [1]	Liechtenstein [1]
Argentine Republic [2]	Mexico [1]
Danzig [1]	Monaco [1]
Ecuador [2]	San Marino [1]
Egypt [1]	Soviet Union [1]
Honduras [2]	Turkey [1]
Iceland [1]	United States [2]

Total — 14

[1] Notified by the Court of the resolution of the Council of the League of Nations of May 17, 1922. It should be noted that the state to which the Court is opened must "undertake to carry out in full good faith the decision or decisions of the Court and not to resort to war against a state complying therewith" (Resolution, par. 1).

[2] Open by reason of membership in the League of Nations or mention in the Annex to the Covenant.

PERMANENT COURT OF INTERNATIONAL JUSTICE

Protocol of Signature [1]

The Members of the League of Nations, through the undersigned, duly authorized, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th December, 1920, at Geneva.

Consequently, they hereby declare that they accept the jurisdiction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th December, 1920, is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The said Protocol shall remain open for signature by the Members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the above-mentioned decision.

Executed at Geneva, in a single copy, the French and English texts of which shall both be authentic.

December 16, 1920.

[Here follow signatures of 52 Members of the League of Nations.]

[1] League of Nations, *Treaty Series*, VI, p. 380; XI, p. 404; XV, p. 304; XXIV, p. 152; XXVII, p. 416; XXXIX, p. 165; XLV, p. 96; L, p. 159; LIV, p. 387; LXIX, p. 70; LXXII, p. 452; LXXVIII, p. 435.

OPTIONAL CLAUSE

The undersigned, being duly authorized thereto, further declare, on behalf of their Government, that, from this date, they accept as compulsory, *ipso facto* and without special Convention, the jurisdiction of the Court in conformity with article 36, paragraph 2, of the Statute of the Court, under the following conditions:

[The declarations made by Signatory States are not here reprinted. They may be found in Hudson, *op. cit.*, p. 104, as compiled from *Treaty Series* volumes cited in note 1, p. 81 [721], *supra*.]

STATES WHICH HAVE SIGNED THE OPTIONAL CLAUSE

(As of October 1, 1929)

(Asterisk (*) indicates states bound by the clause)

States Signatory	Date of Ratification [1]	States Signatory	Date of Ratification [1]
Australia		India	
* Austria	Mar. 13, 1927	Irish Free State	
* Belgium	Mar. 10, 1926	Italy	
Brazil	– –[2]	Latvia	
British Empire		Liberia	
* Bulgaria	Aug. 12, 1921	*[Lithuania [3]	– –[2]]
Canada		Luxemburg	
*[China [3]	– –[2]]	* Netherlands	– –[2]
Costa Rica [4]	– –[2]	New Zealand	
Czechoslovakia		Nicaragua [4]	
* Denmark	Mar. 28, 1926	* Norway	Oct. 3, 1921
Dominican Republic		* Panama	June 14, 1929
		Peru	
* Estonia	– –[2]	* Portugal	Oct. 8, 1921
* Ethiopia	July 16, 1926	Salvador [4]	– –[2]
* Finland	April 6, 1922	Siam	
France		South Africa	
* Germany	Feb. 29, 1928	* Spain	– –[2]
* Greece	Sept. 12, 1929	* Sweden	– –[2]
Guatemala		* Switzerland	July 24, 1926
* Haiti	– –[2]	* Uruguay	Sept. 27, 1921
* Hungary	Aug. 13, 1929		

Total — 42

[1] Ratification of the Optional Clause is not required by the document itself.

[2] Ratification not specified and not actually deposited.

[3] Five-year period specified has expired.

[4] Without condition as to ratification, but has not ratified the protocol of signature of the Statute.

STATUTE FOR THE PERMANENT COURT OF INTERNATIONAL JUSTICE, SHOWING AMENDMENTS PROVIDED FOR BY THE PROTOCOL OF SEPTEMBER 14, 1929[1]

Art. 1. A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I

Organization of the Court

Art. 2. The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Amendment

Art. 3. The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

Art. 3. The Court shall consist of fifteen members.

Art. 4. The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

[1] The Statute of December 16, 1920, is printed to embody the amendments called for by the annex to the protocol of September 14, 1929, which is printed in League of Nations Document A. 50. 1929. V. 16. These amendments will not in any case come into force before September 1, 1930.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the list of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.[1]

Amendment

The conditions under which a state which has accepted the Statute of the Court but is not a member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.

Art. 5. At least three months before the date of the election, he Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the states mentioned in the Annex to the Covenant or to the states which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the

[1] Article 44 of the convention of The Hague of 1907 for the pacific settlement of international disputes reads as follows:

"Each contracting power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

"The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the contracting powers by the Bureau.

"Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the contracting powers.

"Two or more powers may agree on the selection in common of one or more members.

"The same person can be selected by different powers.

"The members of the Court are appointed for a term of six years. These appointments are renewable.

"Should a member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years."

number of candidates nominated be more than double the number of seats to be filled.

Art. 6. Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

Art. 7. The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

	Amendment
Art. 8. The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.	**Art. 8.** The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

Art. 9. At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

Art. 10. Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

Art. 11. If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Art. 12. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Amendment

Art. 13. The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

Art. 13. The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This last[1] notification makes the place vacant.

Amendment

Art. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of ap-

Art. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League

[1] The word "last" was included in text adopted by the Assembly, as recommended by the conference of September 4–12, 1929.

pointment had not expired will hold the appointment for the remainder of his predecessor's term.

of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.

Amendment

Art. 15. Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

Art. 15. A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.

Amendment

Art. 16. The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

Art. 16. The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.[1]

Any doubt on this point is settled by the decision of the Court.

Amendment

Art. 17. No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

Art. 17. No member of the Court may act as agent, counsel or advocate in any case.[2]

No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member

[1] The words "occupation of a professional nature" are, according to the conclusion of the conference of September 4–12, 1929, "to be interpreted in the widest sense, *i.e.*, cover, for example, such an activity as being director of a company."

[2] The Committee of Jurists had specified "case of an international nature."

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international court, or of a commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

of a national or international Court, or of a commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

Art. 18. A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

Art. 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Art. 20. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Art. 21. The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

Art. 22. The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

Amendment

Art. 23. A session of the Court shall be held every year.

Unless otherwise provided by Rules of Court, this session shall begin on the 15th of June, and shall continue for so long as

Art. 23. The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in traveling.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

Art. 24. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Amendment

Art. 25. The full Court shall sit except when it is expressly provided otherwise.

If eleven judges can not be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

Art. 25. The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

Art. 26. Labor cases, particularly cases referred to in Part XIII (Labor) of the treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular

Amendment

Art. 26. Labor cases, particularly cases referred to in Part XIII (Labor) of the treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labor cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one-

case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labor cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one-half, representatives of the workers, and as to one-half, representatives of employers from the list referred to in Article 412 of the treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labor cases the International Labor Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

half, representatives of the workers, and as to one-half, representatives of employers from the list referred to in Article 412 of the treaty of Versailles and the corresponding articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present article, if the parties so request.

In Labor cases the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

Amendment

Art. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the

Art. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the

provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each Member of the League of Nations.

provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communication Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present article, if the parties so request.

Art. 28. The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

	Amendment
Art. 29. With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.	**Art. 29.** With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

Art. 30. The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

	Amendment
Art. 31. Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court. If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5. If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.	**Art. 31.** Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court. If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5. If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph. The present provision shall

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

apply to the case of Articles 26, 27 and 29. In such cases the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Art. 32. The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

Amendment

Art. 32. The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an

The Vice-President, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Traveling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council.[1] They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar,[2] and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

[1] On September 13, 1929, the Council of the League of Nations adopted the following resolution, the substance of which had been proposed in the report of the Committee of Jurists:

"With reference to Art. 32 of the Court's Statute, the Council agrees with the suggestions of the Supervisory Commission and proposes that, subject to the entry into force of the amendments proposed in the Court's Statute, the Assembly should fix the salaries of the members of the Court from January 1, 1931, as follows:

		Dutch florins
"*President:*	Annual salary	45,000
	Special allowance	15,000
"*Vice-President:*	Annual salary	45,000
	Allowance of 100 florins for each day on which he acts as President, up to a maximum of	10,000
"*Members:*	Annual salary	45,000
"*Judges referred to in Art. 31 of the Statute:*	Allowance of 100 florins for each day of duty, plus a daily subsistence allowance of 50 florins."	

Appropriate Assembly action will take place in connection with the adoption of the budget for the financial year 1931.

[2] The Assembly of the League of Nations on September 14, 1929, adopted a report approving regulations for the repayment of traveling expenses to the members and to the registrar of the Court as recommended by the Supervisory Commission.

The report recorded that Art. 32 of the Statute as then in force provided that the regulation concerning retiring pensions of judges was to be fixed by the Assembly on the proposal of the Council. The article as amended provides for the determination of the regulations by the Assembly. In 1929, as the Council had not submitted

special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

The above salaries, indemnities and allowances shall be free of all taxation.

Art. 33. The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

Chapter II

Competence of the Court

Art. 34. Only States or Members of the League of Nations can be parties in cases before the Court.

Art. 35. The Court shall be open to the Members of the League and also to states mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a state which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute toward the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

Art. 36. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force.

The Members of the League of Nations and the states mentioned in the Annex to the Covenant may, either when signing or ratifying

a proposal, the Assembly did not act upon a revision of the regulations regarding retiring pensions proposed by the Committee of Jurists and reading as follows:

"The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease."

However, the Supervisory Commission in its session of June 21–25, 1929, proposed the following text:

"The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. In certain exceptional cases, however, the pension may, by a decision of the Court, be made payable in whole or in part to persons entitled thereto who have not reached that age."

the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a Treaty;

(*b*) Any question of International Law;

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Art. 37. When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

Art. 38. The Court shall apply:

(1) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(2) International custom, as evidence of a general practice accepted as law;

(3) The general principles of law recognized by civilized nations;

(4) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[1]

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Chapter III

Procedure

Art. 39. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the

[1] A proposed amendment affects the French text only; see Committee Report, p. 118 [758].

parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.[1]

Amendment

The Court may, at the request of the parties, authorize a language other than French or English to be used.	The Court may, at the request of any party, authorize a language other than French or English to be used.

Art. 40. Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

Amendment

He shall also notify the Members of the League of Nations through the Secretary-General.	He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

Art. 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

[1] The Tenth Assembly of the League of Nations on September 14, 1929, adopted the following:

"The Assembly associates itself with the following recommendation adopted by the Conference:

"'The Conference recommends that, in accordance with the spirit of Arts. 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognized practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature.'"

Art. 42. The parties shall be represented by agents.

They may have the assistance of counsel or advocates before the Court.

Art. 43. The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Art. 44. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

	Amendment
Art. 45. The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.	**Art. 45.** The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.[1]

Art. 46. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Art. 47. Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

Art. 48. The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

[1] The amendment is solely an improved version of the English text.

Art. 49. The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Art. 50. The Court may, at any time, intrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

Art. 51. During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Art. 52. After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Art. 53. Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Art. 54. When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

Art. 55. All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

Art. 56. The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

Art. 57. If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

Art. 58. The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Art. 59. The decision of the Court has no binding force except between the parties and in respect of that particular case.

Art. 60. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Art. 61. An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

Art. 62. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

Art. 63. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Art. 64. Unless otherwise decided by the Court, each party shall bear its own costs.

Present Rules of Court	*Amendment to Statute*
[The proposed amendments to the Statute are adaptations from the following articles of the Rules of Court:]	CHAPTER IV
	Advisory Opinions
Art. 72. Questions upon which the advisory opinion of the Court is asked shall be laid	**Art. 65.** Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a

before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Art. 73. 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the members of the Court, to the Members of the League of Nations, through the Secretary-General of the League, and to any states entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or state admitted to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Art. 66. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any states entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any Member or state referred to in the first paragraph have failed to receive the com-

Should any state or Member referred to in the first paragraph have failed to receive the communication specified above, such state or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

2. States, Members and organizations having presented written or oral statements or both shall be admitted to comment on the statements made by other states, Members or organizations, in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states, Members and organizations having submitted similar statements.

Art. 74. Advisory opinions shall be read in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of states, of Members of the League and of international organizations immediately concerned. . . .[1]

munication specified above, such Member or state may express a desire to submit a written statement, or to be heard; and the Court will decide.

Members, States and organizations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States or organizations in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States and organizations having submitted similar statements.

Art. 67. The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of states and of international organizations immediately concerned.

Art. 68. In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.[2]

[1] The remainder of Art. 74 of the Rules of Court stipulates duties of the Registrar.

[2] *Cf.* Committee Report, League Doc. A. 50. 1929. V. 16, p. 3.

II. REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF THE AMENDMENT OF THE STATUTE, MARCH 19, 1929 [1]

On September 20, 1928, the Assembly of the League of Nations adopted the following resolution:

The Assembly,

Considering the ever increasing number of matters referred to the Permanent Court of International Justice;

Deeming it advisable that, before the renewal of the term of office of the members of the Court in 1930, the present provisions of the Statute of the Court should be examined with a view to the introduction of any amendments which experience may show to be necessary;

Draws the Council's attention to the advisability of proceeding, before the renewal of the term of office of the members of the Permanent Court of International Justice, to the examination of the Statute of the Court with a view to the introduction of such amendments as may be judged desirable and to submitting the necessary proposals to the next ordinary session of the Assembly.

In pursuance of this resolution the Council decided on December 13 and 14, 1928, to set up a committee consisting of Jonkheer van Eysinga, M. Fromageot, M. Gaus, Sir Cecil Hurst, M. Ito, M. Politis, M. Raestad, M. Rundstein, M. Scialoja, M. Urrutia and a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur, who selected M. Elihu Root. The Council further invited the President and the Vice-President of the Court, M. Anzilotti and M. Huber and the chairman of the Supervisory Commission, M. Osusky, to participate in the work of the committee. M. Pilotti was added to the committee on March 9, 1929.

The Council Rapporteur had pointed out that, having regard to the terms of the Assembly's decision, the committee should have wide terms of reference, namely, "to report what amendments appear desirable in the various provisions of the Court's Statute." He further stated "that the committee would, of course, be competent to examine such suggestions as may reach it, during its work,

[1] Reprinted from Document C. 142, M. 52. 1929, V. 4, p. 2.

from authoritative sources" and "that it would fall to the committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court."

As may be seen from the discussion in the Assembly, the latter did not contemplate recasting completely the Statute of the Court; it had merely in view the possibility of supplementing or improving the Statute in the light of the experience already acquired.

It is in this spirit that the committee, which met at Geneva on March 11, 1929, under the chairmanship of M. Scialoja, has pursued its work, which was completed on March 19 under the chairmanship of Jonkheer van Eysinga, the vice-chairman.

In the proposals which the committee has the honor to submit to the Council, it has been in general actuated by the desire to give the States full assurance that the Permanent Court of International Justice established by the League of Nations is a real *judicial* body which is constantly at their disposal for the purpose of hearing and determining their disputes and which possesses alike the necessary juristic competence and experience of international affairs.

It would appear that effect can be given to some of the committee's proposals by means of *vœux* or recommendations; other proposals would appear to call for an amendment of the existing text of the Statute.

In the first place, the committee examined the qualifications which members of the Court should possess in order to satisfy the expectations of Governments in regard to the Permanent Court of International Justice. These conditions will be found in Art. 2 of the Statute. The committee has thought that it would be desirable to mention, in addition to recognized competence in international law which is mentioned in Art. 2 of the Statute, the requirement of practical experience in this sphere.

Similarly, the national groups, when nominating their candidates in accordance with Art. 5, should attach to each nomination a statement of the career of the person nominated, showing that he possesses the required qualifications.

Further, as the official languages of the Court are French and English, it appears essential that the judges should be at least able to read these languages and to speak one of them. Though this may be self-evident, the committee has thought that it would be desirable to draw the special attention of the national groups to the point.

The committee is of opinion that, despite their importance, none of these three questions necessitates a modification of the existing

texts, and that it would be sufficient to proceed by way of a recommendation, as follows:

"*The Committee decides to advise the Assembly to adopt the following recommendation:*

" '*The Secretary-General, in issuing the invitations provided for in Art. 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognized practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.*' "

On the other hand it appeared necessary to deal with the following questions by means of amendments:

1. Composition of the Court

Experience has shown that deputy-judges have been called upon almost constantly to sit on the Court, the reason being that the majority of them are resident in Europe and were consequently more readily available than judges belonging to other continents; this has tended to give the Europeans a privileged position. On the other hand, as the deputy-judges have in fact been placed on a footing of equality with the ordinary judges in regard to the work performed, without being subject to the same disabilities, the difference in treatment in this latter respect has not been without its disadvantages. Finally, a further difference between the two classes of judges — that relating to their emoluments — has actually disappeared, since the allowances granted to deputy-judges have placed them in a situation almost equal to that of the ordinary judges.

Practical experience thus points to assimilation of the two classes of judges and accordingly suggests the desirability of abolishing the deputy-judges and replacing them by an equal number of ordinary judges.

The committee proposes, therefore, to increase the number of ordinary judges from eleven to fifteen and to omit all mention of deputy-judges in Art. 3. The disappearance of the deputy-judges naturally involves consequential amendment of various articles in the Statute in which they are mentioned. These changes will be indicated below in connection with Arts. 8, 15, 16, 17, 25, 31 and 32. To avoid the risk of an exaggeration which might cause mis-

conception, it also appeared desirable to omit in the new text of Art. 3 the reference to a possible increase of the members of the Court above the number of fifteen.

As a result, the new text of Art. 3 would be as follows:

The Court shall consist of fifteen members.

2. Election of Judges

As already stated the text of Art. 8 will, as a result of the disappearance of the deputy-judges, read as follows:

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

3. Resignation of a Judge

The resignation of a judge is not provided for in the present existing text of the Statute. The question has, however, arisen in practice, and doubts have been felt as to the procedure to be adopted in such cases. The committee considered that it would be desirable to supply the omission and to take the view that, once a resignation has been transmitted to the League of Nations, it must be regarded as final; but that, nevertheless, the resignation should be transmitted to the League by the President of the Court in order that he may, if desirable, be able to satisfy himself that the decision of the judge concerned is irrevocable.

Consequently, the committee proposes to add two paragraphs to Art. 13, which would read as follows:

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This notification makes the place vacant.

4. Filling of Occasional Vacancies

Art. 14 of the Statute merely provides that vacancies which may occur shall be filled by the same method as that laid down for the renewal of the entire Court. Experience has shown that there is

a serious disadvantage in waiting for the annual meeting of the Assembly before filling a vacancy, as this may cause a delay of as much as fifteen months. During this period the Court might be deprived of its essential characteristic — that of a body representative of the various juridical systems — while at the same time the uninterrupted and regular working of this high tribunal might be rendered more difficult.

To remedy this defect the committee has thought it desirable to establish a somewhat elastic system which, especially in cases deemed by the Council of the League of Nations to be urgent, would allow of the filling even of a single vacancy within the shortest possible space of time. Under this system the Secretary-General of the League of Nations would address the prescribed request, within one month after the occurrence of any vacancy, to the national groups, in accordance with Art. 5, and the Council would be in a position at its next session to decide whether the election was of a sufficiently urgent character to necessitate the convening of the Assembly in extraordinary session before its ordinary September session.

The system would be embodied in the following new draft of Art. 14:

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Art. 5, and the date of the election shall be fixed by the Council at its next session.

5. New Article 15

As Art. 15 of the Statute disappears with the disappearance of the deputy-judges, the committee proposes to make a new Art. 15 out of the unaltered part of Art. 14, reading as follows:

A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.

6. Functions and Occupations Incompatible with Membership of the Court

In accordance with the guiding idea of the committee's work, namely, that the Court, by its composition and its operation, should inspire in the states the highest possible degree of confidence, the

committee has thought that it would be necessary to amplify the rules of Art. 16 as to what functions and occupations are incompatible with membership of the Court and for this purpose to indicate clearly that the members of the Court must not only refrain from exercising any political or administrative function but also may not engage in any other occupation of a professional nature. Naturally, it would be permissible for members of the Court to be included on the list of members of the Permanent Court of Arbitration and to exercise, if their duties on the Court allowed them the necessary leisure, the functions of arbitrators or conciliators, provided always that the instrument under which they were appointed did not provide for a reference to the Court following upon the arbitration or upon the failure of the conciliation proceedings.

With the disappearance of the deputy-judges, the second sentence in Par. 1 of Art. 16 naturally disappears as well.

Art. 16 would thus read as follows:

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

Any doubt on this point is settled by the decision of the Court.

7. Article 17

The second sentence of the first paragraph of Art. 17 referring to deputy-judges becomes meaningless and is to be omitted.

At this point, the committee feels it should observe that while it is stated that no member of the Court can act as agent, counsel or advocate in any case of an international nature, it will not henceforth, in view of the new Art. 16, be possible to infer *a contrario* that he is free to exercise the said functions in a case which is national in character. It has not seemed necessary to redraft the text of the second paragraph.

The same consideration applies to the end of the second paragraph, which states that no member of the Court may participate personally in any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international court, or of a commission of inquiry, or in any other capacity. Obviously, the same would hold good as to their participation in a commission of conciliation; this appeared to be indicated clearly enough in the expression "or in any other capacity."

Art. 17 would therefore read as follows:

No member of the Court may act as agent, counsel or advocate in any case of an international nature.

No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

8. Permanent Functioning of the Court

Under the system at present laid down, the Court holds one session annually, beginning on June 15, and it is convened, in exceptional cases, in extraordinary session when circumstances so require.

In practice, the Court has often been obliged, on account of the increase in the cases referred to it, to hold several extraordinary sessions annually. In so doing, it has occasionally encountered serious practical difficulties. The repeated holding of extraordinary sessions has, in this way, tended, in fact, to bring the Court nearer to that permanent character which its title denotes, and which its promoters had contemplated in order to advance the progress of international justice.

The committee accordingly considers that it is desirable to bring the written rules into harmony with the facts and to indicate, in a new draft of Art. 23, a more regular working of the Court by providing, in imitation of national Courts, for a real international judicial year. It therefore proposes to state that the Court shall, in principle, remain constantly in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

On the other hand, in order to enable members of the Court whose ordinary residence is in a country at a considerable distance from its seat, to return occasionally to their homes during their term of office, it is suggested that they should be granted the right to six months' leave every three years in addition to the ordinary vacations.

Apart from exceptional cases, such as that of illness or other good reason for absence, the judges must be permanently at the disposal of the Court.

It is to be understood that this principle applies even during the judicial vacations, in the sense that it will be for the Court, when

fixing the length of the vacation, to provide for the possibility of convening at The Hague, in an urgent case, such a number of judges as would be necessary to allow it to discharge its duties.

It would also be for the Court to provide in its Rules for the organization of a vacations procedure for the cases in which a full meeting of the Court would not be necessary.

Art. 23 would accordingly be redrafted as follows:

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

9. Manner of Forming the Court

As a result of the disappearance of the deputy-judges the present Par. 2 of Art. 25 must be deleted.

The committee proposes to replace it by a provision which would enable judges, when there is a heavy cause-list, to sit in turn in order to insure the prompt dispatch of business and would at the same time make it possible to remove the disadvantages that might arise from the cooperation in one and the same case of fifteen members of the Court.

Under this provision the Court would have the power to provide in its Rules that, according to circumstances and in rotation, a judge or judges might be dispensed from sitting.

The intention of the committee has of course been that the right just mentioned should in no case be so exercised as to give grounds for any suspicion that the Court has in a given case been specially composed for the purpose of affecting the decision of the case.

The deletion of Par. 2 of Art. 25 necessarily involves the redrafting of Par. 3. There is no longer any point in providing that a certain number of judges must be available since, as previously stated, all judges are in principle constantly at the disposal of the Court. It is therefore sufficient to retain the essential sentence in the third paragraph relating to the quorum.

The new Art. 25 would be worded as follows:

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

10. Special Chamber for Labor Cases

The redrafting of Art. 25 involves a change in Par. 2 of Art. 26, which states that the Court will sit with the number of judges provided for in Art. 25. It should now be said that the full Court will sit.

In the next sentence of the same paragraph, the committee is of opinion that, for the sake of clearness, it is necessary to read "In both cases," that is to say, the cases which are referred to, instead of "on all occasions," because, as is suggested later on, the summary procedure without the assistance of the technical assessors becomes possible in labor cases.

Par. 3 of Art. 26 should be deleted in consequence of the modification proposed later in Art. 31 in regard to national judges.

The committee would suggest replacing this paragraph by inserting, as the last paragraph but one of Art. 26, a stipulation allowing the parties, should they so desire, to resort to the summary procedure provided for in Art. 29.

It is the committee's intention that, whenever resort is had to this right, the Court constituted as a chamber for summary procedure should consist of five judges only, as will be stated later in connection with Art. 29, without the presence of technical assessors.

Art. 26 would accordingly be drafted as follows:

Labor cases, particularly cases referred to in Part XIII (Labor) of the treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Art. 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases the judges will

be assisted by four technical assessors sitting with them, but without the right to vote and chosen with a view to insuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Art. 30 from a list of "Assessors for Labor Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one-half, representatives of the workers and as to one-half, representatives of employers from the list referred to in Art. 412 of the treaty of Versailles and the corresponding articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Art. 29, in the cases referred to in the first paragraph of the present article, if the parties so request.

In labor cases the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

11. Special Chamber for Transit and Communications Cases

The committee considered whether it might not be well to delete Art. 27, seeing that no application has yet been received and that in the opinion of certain persons it is unlikely that any will ever be received. Nevertheless, the committee thought it preferable to retain the article, modifying it, however, in the same way as Art. 26, *i.e.*, by substituting in Par. 2 the words "the full Court will sit" for the present text "the Court will sit with the number of judges provided for under Art. 25;" by omitting paragraph 3; and, finally, by inserting as the last paragraph of Art. 27 the same new provision as is contained in the previous article with regard to summary procedure.

The new draft of Art. 27 would therefore be as follows:

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Art. 9. In addition, two judges shall be selected for the purpose of

replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Art. 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Art. 29, in the cases referred to in the first paragraph of the present article, if the parties so request.

12. Chamber for Summary Procedure

As indicated below in connection with Art. 31, the committee considered that, as the system of national judges exists, it should apply to the Chamber for Summary Procedure as well as to any other form of the Court. It will, therefore, be necessary to bring Art. 29 into harmony with the new draft of Art. 31 and for this purpose to make the Chamber for Summary Procedure consist of five judges instead of three. Provision must also be made, as in the case of the other special chambers (Arts. 26 and 27), for the selection of two judges to replace a judge who finds it impossible to sit.

Art. 29 would therefore read as follows:

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

13. National Judges

The committee considered that it was no part of its duty to deal with the institution of national judges, which is regarded by certain states as one of the essential principles of the organization of the Court.

It also considered that, in view of the importance which certain states attach to this system, its application should not be limited, as is at present done in Art. 31, to the single case in which the full Court sits, but that, on the contrary, it should be extended to the Court in all its forms.

With this object, the committee proposes to insert as a fourth

paragraph in Art. 31 a provision making the system of national judges apply to the Special Chambers for Labor, for Communications and Transit and for Summary Procedure (Arts. 26, 27 and 29).

Moreover, the disappearance of the deputy-judges necessitates redrafting Par. 2 of Art. 31. There must be a slight change in Par 2 and changes of minor importance in Pars. 3 and 5 of Art. 31.

The new Art. 31 would read as follows:

Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Arts. 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

The present provision shall apply to the case of Arts. 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in Pars. 2, 3 and 4 of this article shall fulfil the conditions required by Arts. 2, 17, Par. 2, 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

14. Salaries of Judges

The permanent character of the Court having been more firmly established, and the requirements as to the selection of judges and the rules regarding the other occupations which they may not follow concurrently having been more clearly stated, it has been thought expedient to abandon the mixed system at present in force, which consists in an annual indemnity and allowances for each day of service. Payment for the services and subsistence expenses of members of the Court at The Hague will now take the form of a fixed inclusive annual salary which, in fact, will correspond approximately to the maximum obtainable by the judges under the present system.

This will be a simplification of a system which at present is particularly complicated.

Accordingly, the committee proposes to redraft Art. 32 completely and to submit to the Assembly a draft resolution to be substituted for the resolution of December 18, 1920, concerning the salaries of members of the Court.

It has not, however, been thought expedient to include in the annual salary the traveling expenses of members attending the Court or their traveling expenses while on duty.

In the committee's view, it is for the Assembly to lay down special regulations on this point. The committee considers, however, that the members of the Court and the Registrar should, apart from journeys made on duty, be reimbursed for only one journey every year from the seat of the Court to their homes and back again.

The final paragraph of the present Art. 32 deals with retiring pensions for the personnel of the Court. It refers to a special regulation which was made by the Assembly in 1924. This regulation will require revision; the Supervisory Commission will lay the matter before the Assembly, but on account of certain proposed amendments to the Statute of the Court, of which a brief summary was given at the head of this section, the committee is of opinion that the Assembly's attention should be specially drawn to the desirability of redrafting Par. 5 of Art. 1 of the 1924 regulation in the terms indicated in the attached draft resolution as to pensions.

The new text of Art. 32 and the accompanying draft resolutions, referred to above, would be as follows:

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Art. 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

Draft resolution concerning salaries:

In accordance with the provisions of Art. 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows:

President:	Dutch florins
Annual salary	45,000
Special indemnity	15,000
Vice-President:	
Annual salary	45,000
Allowance for each day on duty (100 x 100)	10,000 (maximum)

Members:	Dutch florins
Annual salary	45,000
Judges referred to in Article 31 of the Statute:	
Indemnity for each day on duty	100
Allowance for each day of attendance	50

Draft resolution amending Par. 5 of Art. 1 of the regulation regarding pensions.[1]

The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease.

15. Contributions of States not Members of the League of Nations

The committee does not propose any amendment to Art. 35, but thinks that an observation is called for on paragraph 3 of that article.

In view of the third reservation attached by the United States to their accession to the Protocol of Signature, Par. 3 of Art. 35 should not apply to the special case of the United States, if they accede to the Court Statute.

[1] The original paragraph reads as follows:

"The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Nevertheless, in exceptional cases and by a special decision of the Court, in consideration of the state of health or the means of the beneficiary, pensions may be paid to such beneficiary before he reaches the age of 65." (*League of Nations, Resolutions and Recommendations Adopted by the Assembly during its Fifth Session*, p. 36 (*Official Journal*, Spec. Supp. No. 21)).

16. Amendment to No. 4 of Article 38

The committee has only a very slight and purely formal amendment to propose to No. 4 of Art. 38. It consists in restoring in the French text a few words which appear in the English text. In the said No. 4 of Art. 38, after the words "*la doctrine des publicistes les plus qualifiés*," the words "*des différentes nations*" shou d be added.

Art. 38, No. 4, would then read in the French text as follows:

4. *Sous réserve de la disposition de l'article 59, les décisions judicaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des régles de droit.*

17. Procedure

In the final paragraph of Art. 39, where reference is made to the power of the Court to authorize, at the request of the parties, the use of a language other than French or English, the committee thinks it should be more clearly stated that such authorization may be granted without agreement between the parties, provided one of them so requests. Experience has shown that it might be desirable to make this clearer.

Art. 39, paragraph 3, would then read as follows:

The Court may, at the request of any party, authorize a language other than French or English to be used.

18. Communication of Applications

In Par. 3 of Art. 40, the committee thinks it would be desirable to bring the text of the Statute into line with Art. 73 of the present Rules of Court, which latter provision, as will be seen, the committee proposes to embody in the new draft of the Statute.

Art. 40, Par. 3, would then read as follows:

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

19. Direction of the Hearing

The English text of Art. 45 does not quite correspond to the French text, which here is better.

In order to bring the two texts into concordance, the committee proposes to replace the words "in his absence" by the words "if he is unable to preside," and the words "if both are absent" by the words "if neither is able to preside."

The English text of this article would then read as follows:

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

20. Advisory Opinions

The present Statute contains no explicit reference to advisory opinions. The Court has been compelled by circumstances to remedy this omission to a certain extent in Arts. 71, 72, 73 and 74 of the Rules of Court.

The committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character, which seems particularly desirable to-day in view of the special circumstances attending the possible accession of the United States to the Protocol of Signature of the Statute of the Court.

The committee therefore proposes to add at the end of the present Statute a new chapter numbered IV and headed "Advisory Opinions," the first three articles of which, numbered 65, 66 and 67, would reproduce the substance of Arts. 72, 73 and 74 of the present Rules of Court.

It also proposes that a final article numbered 68 should be added to this chapter in order to take account of the fact that the Court may be called upon to give advisory opinions both in contentious and in noncontentious matters. The effect would be that, in the former case, the Court would apply the provisions relating to contentious procedure referred to in the previous chapters of the Statute, whereas those provisions would not always be applicable when the Court gave an opinion on a noncontentious matter. Thus, for example, Arts. 57 and 58 should apply in all cases, but Art. 31 would only apply when an advisory opinion was asked on a question relating to a dispute which had already arisen.

The new Arts. 65, 66, 67 and 68 would be worded as follows:

Chapter IV

Advisory Opinions

Art. 65. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all documents likely to throw light upon the question.

Art. 66. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.

Art. 67. The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

Art. 68. In the exercise of its advisory functions the Court shall apply Arts. 65, 66 and 67. It shall further be guided by the provisions of the preceding Chapters of this Statute to the extent to which it recognizes them to be applicable to the case.

Such are the proposals which the committee has the honor to submit for the Council's consideration.

The committee has to observe that, in the course of its work, it has found somewhat inappropriate expressions used in the French and in the English texts of several articles of the Statute; it has, however, felt it unnecessary to propose corrections, as it does not wish to encumber the present report with suggestions which are not clearly of practical value.

Finally, the committee has considered what would be the appropriate procedure for bringing into force the amendments proposed in the present report.

On this subject the committee ventures to make the following suggestions:

If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the states mentioned in the Annex to the Covenant and to transmit them to the Assembly; it would be desirable that, if the amendments secure general approval, the protocol accepting them which must be concluded between the parties which have ratified the 1920 Statute should be made in the course of next Assembly.

On this point the committee must call the attention of the Council to the necessity for taking appropriate measures to secure the entry into force of the amendments a sufficient time before the election of the members of the Court in September, 1930, on account, more particularly, of the changes which are made in regard to the number of the members of the Court and the rules as to the occupations which are incompatible with membership.

III. CONVOCATION OF A CONFERENCE: REPORT AND RESOLUTION OF THE COUNCIL OF THE LEAGUE OF NATIONS, JUNE 12, 1929[1]

[Excerpt]

The Committee of Jurists, which sat from March 11–19, 1929, embodied the results of its examination in two separate reports, corresponding to the two parts of its task. These reports, of which members of the Council have already taken note (C. 142. M. 52. 1929)[2] deal in detail with the questions referred to the committee. My colleagues will have found in them the proposals put forward by the committee, together with a statement of the grounds on which those proposals are based.

One of the reports, relating to the revision of the Statute of the Permanent Court of International Justice, recommends certain amendments to that Statute. The report contains the following suggestions in regard to the procedure to be followed in this matter:

> If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the states mentioned in the Annex to the Covenant and to transmit them to the Assembly; it would be desirable that, if the amendments secure general approval, the protocol accepting them, which must be concluded between the parties which have ratified the 1920 Statute, should be made in the course of the next Assembly.
>
> On this point, the committee must call the attention of the Council to the necessity for taking appropriate measures to secure the entry into force of the amendments a sufficient time before the election of the members of the Court in September, 1930, on account, more particularly, of the changes which are made in regard to the number of the members of the Court and the rules as to the occupations which are incompatible with membership.

Although the Assembly's resolution of September 20, 1928, asks the Council "to submit the necessary proposals to the next ordinary session of the Assembly," it seems clear that the intentions of the

[1] *Official Journal*, X, p. 996.

[2] *Ibid.*, p. 1113.

Assembly will be fulfilled only if measures are taken by the Council forthwith for the early consideration by the states parties to the Court's Statute of the proposed amendments. I think that the Council would be correctly interpreting the wishes of the Assembly in deciding, in accordance with the committee's suggestion, that such a consultation should take place concurrently with the next session of the Assembly. I propose, therefore, that the Council decide to convoke a conference of the states parties to the Statute to meet at a date that would enable it to consult with the Assembly, whose intervention is also required. For similar reasons the Council might agree to ask the Supervisory Commission to examine and report to the Assembly at its next session on the financial proposals contained in Par. 14 of the report of the committee.

. . . . . .

I venture, therefore, to submit to the Council the following draft resolution:

The Council adopts the considerations and suggestions put forward by its Rapporteur. In view of the report which the Committee of Jurists has submitted to it on the question of the revision of the Statute of the Permanent Court of International Justice,

The Council decides:

To instruct the Secretary-General to communicate the report of the committee to the Members of the League of Nations and to the states mentioned in the Annex to the Covenant;

To convoke a conference of states parties to the Statute of the Permanent Court of International Justice to meet at Geneva on [Wednesday, September 4,[1]] 1929, with a view to examining the amendments to the Statute and recommendations formulated by the Committee of Jurists;

To request the Supervisory Commission to present to the Assembly at its next ordinary session its opinion as to the measures proposed in paragraph 14 of the report of the Committee of Jurists.

The draft resolution was adopted.

[1] Tuesday, September 10, was the date in the resolution as adopted; however, a reconsideration of the date by the Council resulted in advancing it to Wednesday, September 4 (*Official Journal*, X, p. 1031).

IV. PROTOCOL CONCERNING REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, OPENED FOR SIGNATURE AT GENEVA, SEPTEMBER 14, 1929[1]

1. The undersigned, duly authorized, agree, on behalf of the Governments which they represent, to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September 14, 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible before September 1, 1930, with the Secretary-General of the League of Nations, who shall inform the Members of the League of Nations and the States mentioned in the Annex to the Covenant.

4. The present Protocol shall enter into force on September 1, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the

[1] Reprinted from the protocol in League Document C. 492. M. 156. 1929. V.
The Protocol was opened for signature following the adoption of a resolution by the Assembly of the League of Nations which read in part:
"1. The Assembly adopts the amendments to the Statute of the Permanent Court of International Justice and the draft Protocol which the Conference convened by the Council of the League of Nations has drawn up after consideration of the report of the Committee of Jurists, which met in March 1929 at Geneva and which included among its members a jurist of the United States of America. The Assembly expresses the hope that the draft Protocol drawn up by the Conference may receive as many signatures as possible before the close of the present session of the Assembly and that all the Governments concerned will use their utmost efforts to secure the entry into force of the amendments to the Statute of the Court before the opening of the next session of the Assembly, in the course of which the Assembly and the Council will be called upon to proceed to a new election of the members of the Court."

provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16, 1920.

DONE at Geneva, the fourteenth day of September, nineteen hundred and twenty-nine, in a single copy which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.

[Up to October 1, 1929, the Protocol had been signed on behalf of the following states:

Australia
Austria
Belgium
Bolivia
Brazil
Bulgaria
Canada
Chile
China
Colombia
Czechoslovakia
Denmark
Dominican Republic
Estonia
Finland
France
Germany
Great Britain and Northern Ireland and all Parts of the British Empire not separate Members of the League of Nations
Greece
Guatemala
Haiti
Hungary
India
Irish Free State
Italy
Latvia
Liberia
Luxemburg
Netherlands
New Zealand
Nicaragua
Norway
Panama
Paraguay
Persia
Peru
Poland
Portugal
Rumania
Salvador
Serb-Croat-Slovene State
Siam
South Africa, Union of
Spain
Sweden
Switzerland
Uruguay
Venezuela]

Annex to the Protocol of September 14, 1929

Amendments to the Statute of the Permanent Court of International Justice

Arts. 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions:

[The new texts are here set forth *in extenso;* for them see the Statute, p. 83 [723], *supra.*]

Arts. 39 and 40 are replaced by the following provisions:

[The new text of these articles as printed in the Statute.]

The English text of Art. 45 is replaced by the following provision:

[The text as printed in the Statute.]

The following new chapter is added to the Statute of the Court:

[New Arts. 65–68 are set forth as printed in the Statute.] [1]

[1] *Supra*, p. 101 [741].

V. THE UNITED STATES AND REVISION

Letter from the President of the Conference of Signatory States to the Assembly of the League of Nations[1]

[Excerpt]

The Conference associates itself with the following observations made by its Drafting Committee upon the draft Protocol:

As regards the special position of the United States, it may perhaps prevent misunderstanding if it is pointed out that three instruments relating to the Court will be presented for acceptance to that power, namely:

The Protocol destined to satisfy the reservations attached by the United States Senate to the accession of the United States of America to the Statute of the Court;

The Protocol of Signature of 1920; and

The new Protocol relating to the amendment of the Statute.

There could, of course, be no question of the United States being a party to the unamended Statute while the other states concerned were parties to the Statute in its amended form, but the draft Protocol relating to the amendment of the Statute is believed to safeguard entirely the situation of the United States with regard to the amendments (see par. 7 of the Protocol); and, while it is, of course, not within the province of the Drafting Committee or the Conference to anticipate what procedure the United States may follow, it may be hoped that the United States will in due course sign and ratify all three above-mentioned instruments. It would, in fact, be possible for the United States at the moment when it signs the Protocol dealing with its reservations to sign also the Protocol of Signature of 1920 and that relating to the amendments, subject to the eventual entry into force of the first-mentioned agreement.

[1] Reprinted from League of Nations Document A. 50. 1929. V. 16, p. 3.

APPENDIX II

ACCESSION OF THE UNITED STATES

I. SENATE RESOLUTION GIVING ADVICE AND CONSENT OF THE SENATE TO THE ADHESION BY THE UNITED STATES TO THE PROTOCOL OF DECEMBER 16, 1920, WITH RESERVATIONS, JANUARY 27, 1926 [1]

Whereas the President, under date of February 24, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17, 1923, asking the favorable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the optional clause for compulsory jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence: Therefore, be it

Resolved (*two-thirds of the Senators present concurring*), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the optional clause for compulsory jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely:

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of Versailles.

[1] S. Res. 5, 69th Cong. 1st sess., as modified in open executive session, January 16 (calendar day, January 23), 1926, and passed January 16 (calendar day, January 27), 1926.

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other states, members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

5. That the Court shall not render any advisory opinion except publicly after due notice to all states adhering to the Court and to all interested states and after public hearing or opportunity for hearing given to any state concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

The signature of the United States to the said Protocol shall not be affixed until the powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

Resolved, further, As a part of this act of ratification that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other state or states can be had only by agreement thereto through general or special treaties concluded between the parties in dispute; and

Resolved, further, That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

II. PRELIMINARY DRAFT OF A PROTOCOL ADOPTED BY THE CONFERENCE OF STATES SIGNATORIES, SEPTEMBER 23, 1926 [1]

The states signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16, 1920, and the United States of America, through the undersigned duly authorized representatives, have agreed upon the following provisions regarding the adherence by the United States of America to the said Protocol, subject to the five reservations formulated by the United States.

Article 1

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory states, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 2

No amendment of the Statute annexed to the Protocol of December 16, 1920, may be made without the consent of all the contracting states.

Article 3

The Court shall render advisory opinions in public session.

Article 4

The manner in which the consent provided for in the second part of the fifth reservation is to be given, will be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

[1] Annex B of the Final Act of the conference, *Minutes of the Conference* (1926. V. 26), p. 81; Hudson, *op. cit.*, p. 181.

The states signatories of the Protocol of December 16, 1920, will be informed as soon as the understanding contemplated by the preceding paragraph has been reached.

Should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between states, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council.

Article 5

Subject to the provisions of Art. 7 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute annexed to the Protocol of December 16, 1920.

Article 6

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory states. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all the states which have ratified the Protocol of December 16, 1920, including the United States, have deposited their ratifications.

Article 7

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16, 1920. The Secretary-General shall immediately communicate this notification to all the other states signatories of the Protocol.

In such case the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the contracting states may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16, 1920, in the second part of its fourth reservation and in its fifth

reservation. The Secretary-General shall immediately give communication of this notification to each of the states signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the receipt of the said notification, not less than two-thirds of the contracting states other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

Article 8

The present Protocol shall remain open for signature by any state which may in the future sign the Protocol of Signature of December 16, 1920.

Done at....., the.....day of....., 19...., in a single copy, of which the French and English texts shall both be authoritative.

III. RESOLUTION OF THE COUNCIL OF THE LEAGUE OF NATIONS, MARCH 9, 1929[1]

Sir AUSTEN CHAMBERLAIN submitted the following proposal and draft resolution:[2]

My Government received a few days ago a note from the Secretary of State of the United States of America relating to the accession of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice. I understand that similar notes have been received by the Governments of the other signatories.

The Secretary of State's communication relates more particularly to the reply made to the communication of 1926 by 24 Governments as a result of the conference which was held at the end of that year at Geneva.

My Government has observed with satisfaction that the United States Government feels that a further informal exchange of views, such as was contemplated by the conference, ought to lead to an agreement which would be satisfactory to all parties.

The Secretary of State's note has reached the Governments at the moment at which the Committee of Jurists, appointed under the Council's resolution of December 14, 1928,[3] is about to commence its study of the question of eventual amendment of the Statute of the Court. The task with which this committee has been entrusted makes it, in my opinion, possible that it might be able to furnish valuable assistance toward reaching the agreement which is contemplated in the Secretary of State's note, and which I am sure is greatly desired by all the present signatories of the Protocol of Signature of the Court's Statute.

I venture, therefore, to suggest that the Council should invite the committee to examine this question and to offer any advice upon it which it feels it can usefully give. I therefore propose the adoption of the following resolution:

"The Council requests the Committee appointed by its resolution of December 14, 1928, to consider the present situation as regards accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice and to

[1] League of Nations, *Official Journal*, X, p. 564.

[2] Document C. 120. 1929. V.

[3] *Ibid.*, p. 56.

make any suggestions which it feels able to offer with a view of facilitating such accession on conditions satisfactory to all the interests concerned."

He added that he was sure his colleagues would have observed with great pleasure the very sympathetic reference, made in Mr. Kellogg's note, to the Council and its work.

The Government of the United States [he writes] desires to avoid, in so far as may be possible, any proposal which would interfere with or embarrass the work of the Council of the League of Nations, doubtless often perplexing and difficult, and it would be glad if it could dispose of the subject by a simple acceptance of the suggestions embodied in the Final Act and Draft Protocol adopted at Geneva on September 23, 1926. There are, however, some elements of uncertainty in the bases of these suggestions which seem to require further discussion.

The note concluded with the following friendly and hopeful statement:

The Government of the United States feels that such an informal exchange of views as is contemplated by the 24 Governments should, as herein suggested, lead to agreement upon some provision which, in unobjectionable form, would protect the rights and interests of the United States as an adherent to the Court Statute, and this expectation is strongly supported by the fact that there seems to be but little difference regarding the substance of these rights and interests.

It was in the confident hope that the above expectation would be realized that the British representative made his proposal to invite the Committee of Jurists to consider the suggestion. It was a most fortunate circumstance that among the gentlemen who had accepted the invitation of the Council to serve on that committee was the very eminent jurist and statesman, Mr. Elihu Root, than whom no one could be more competent to assist the committee in its task, since he was himself one of the framers of the Statute of the Court.

M. DE AGÜERO Y BETHANCOURT said that, as representative of the Government of Cuba, he wholeheartedly associated himself with the proposal made by the British representative. His Government welcomed all the more cordially the new step taken by the Government of the United States since the Cuban Government

had from the beginning adhered to the amendment presented by that Government. He believed with Sir Austen Chamberlain that the presence of the distinguished jurist, Mr. Elihu Root, could not fail to have a considerable influence in achieving an agreement which was extremely desirable, not only in the interests of the Permanent Court of International Justice but also in the interests of the League of Nations.

M. BRIAND said that, as representative of France, he fully approved the proposal made by the representative of Great Britain and associated himself with the hope that had been expressed to the effect that the Committee of Jurists, whose terms of reference were to be enlarged, might be able, after an exchange of views with the distinguished American statesman then at Geneva, Mr. Elihu Root, to reach an agreement which was warmly desired by every one.

Dr. STRESEMANN associated himself with the proposal made by the Rapporteur and in particular, with the appreciation expressed by him, in common with the other speakers, of the intention of the United States of America to adhere to the Permanent Court of International Justice at The Hague. The adherence on the part of so great a state would constitute a considerable progress in the development of international life and would be an important supplement to the pact for the outlawry of war signed at Paris. He was confident that the Committee of Jurists, with the cooperation of the distinguished American lawyer, would find means of removing any difficulties which might still subsist, so that the intention of the Government at Washington might be carried out as quickly as possible. The accession of the United States would not only help to increase the prestige of the supreme international jurisdiction but would also be a further encouragement to the principle of international arbitration.

Mr. DANDURAND said he was expressing the views of the Canadian Government in cordially adhering to the proposal of the British representative.

M. ZUMETA, on behalf of the Government of Venezuela, fully associated himself with the proposal which had just been made by the British representative and particularly with the declarations and hopes expressed by him and the other speakers.

M. TITULESCO said that the accession of the United States to the Permanent Court of International Justice would be a world event of such importance that he could very warmly support the proposal of the British representative and associate himself with the hopes that had been expressed.

M. PROCOPÉ also associated himself very sincerely with the words of the British representative. He was sure that his Government earnestly hoped that means would be found to render possible the accession of the United States to the Permanent Court of International Justice.

M. VALDÉS-MENDEVILLE said he fully agreed with the proposal of the British representative and particularly with the declarations which had been made. He further indorsed the hopes which had just been expressed, as his country would be extremely glad if a formula could be found which would render possible the accession of the United States to the Permanent Court of International Justice.

He was glad to note that the endeavor to reach a solution which was so greatly desired had been intrusted to Mr. Elihu Root working in cooperation with the Committee of Jurists. Mr. Root's qualities were very widely respected and appreciated in Chile.

M. QUIÑONES DE LEÓN associated himself with the report of the British representative and with the observations which had been added by him.

M. ADATEI cordially agreed with the proposal of the British representative and expressed the hope that the Committee of Jurists would succeed in its new task of settling this question, which was of cardinal importance.

M. ZALESKI, on behalf of Poland, warmly associated himself with the proposals of the British representative.

H. H. MOHAMMAD ALI KHAN FOROUGHI added his approval of the words which had just been spoken, in order to emphasize that the Council was unanimous on the subject.

The PRESIDENT thought it was superfluous to take a vote on the proposal, since all the members of the Council had declared themselves in favor of it. He would be the only member to abstain if he did not add a few words. As a very old delegate to the League of Nations he would remind the Council that, when the Permanent Court of International Justice had first been constituted, the Council had felt it desirable to appoint as a member of that Court a distinguished American lawyer, although the United States had not yet adhered to the Statute of the Court. That had been a solemn invitation addressed to a great country, which now declared itself ready to accept the proposal of the Council. It only remained to settle certain technical legal problems and he hoped the solution would easily be found.

The draft resolution was adopted.

Sir AUSTEN CHAMBERLAIN said that the note originally addressed to the Governments concerned was also by the courtesy of the United States Government, communicated to the League through the intermediary of the United States Legation at Bern,[1] and he would venture to propose that the Council should request the Secretary-General to send a copy of the Minutes of the present discussion to the United States Government through the same intermediary.

The proposal was approved.

[1] *Official Journal*, X, p. 779.

IV. ELIHU ROOT'S SUGGESTED REDRAFT OF ART. 4 OF THE PROTOCOL OF 1926 [1]

(The original form of the Root Plan)

The Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is a party.

The Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is not a party but in which it claims an interest or touching any question other than a dispute in which the United States claims an interest.

The manner in which it shall be made known whether the United States claims an interest and gives or withholds its consent shall be as follows:

Whenever, in contemplation of a request for an advisory opinion, it seems to them desirable, the Council or the Assembly may invite an exchange of views with the United States and such exchange of views shall proceed with all convenient speed.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other states mentioned in the new existing Art. 73 of the Rules of the Court, stating a reasonable time limit fixed by the President within which a written statement by the United States concerning the request will be received.

In case the United States shall, within the time fixed, advise the Court in writing that the request touches a dispute or question in which the United States has an interest and that the United States has not consented to the submission of the question, thereupon all proceedings upon the question shall be stayed to admit of an exchange of views between the United States and the proponents of the request, and such exchange of views shall proceed with all convenient speed.

If after such exchange of views, either while a question is in contemplation or after a question has gone to the Court, it shall appear:

[1] Committee of Jurists. *Minutes*, p. 9.

(1) that no agreement can be reached as to whether the question does touch an interest of the United States within the true meaning of the second paragraph of this article; and (2) that the submission of the question is still insisted upon after attributing to the objections of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council; and if it also appears that the United States has not been able to find the submission of the question so important for the general good as to call upon the United States to forego its objection in that particular instance, leaving the request to be acted upon by the Court without in any way binding the United States; then it shall be deemed that, owing to material difference of view regarding the proper scope of the practice of requesting advisory opinions, the arrangement now agreed upon is not yielding satisfactory results and that the exercise of the powers of withdrawal provided in Art. 7 hereof will follow naturally without any imputation of unfriendliness or of unwillingness to cooperate generally for peace and good will.

V. REPORT ADOPTED BY THE COMMITTEE OF JURISTS, MARCH 18, 1929[1]

On February 19, 1929, the Secretary of State of the United States addressed to each of the Governments which had signed the Protocol of Signature of the Statute for the Permanent Court of International Justice, dated December 16, 1920, and also to the Secretary-General of the League of Nations, a note suggesting that an exchange of views might lead to an agreement with regard to the acceptance of the stipulation set forth in the resolution adopted by the Senate of the United States on January 27, 1926, as the conditions upon which the United States would adhere to the said Protocol. This note was considered by the Council of the League of Nations at its meeting on March 9, 1929, and cordial satisfaction was expressed at the prospect which the note held out that a solution might be found for the difficulties which had prevented the adherence of the United States in 1926. On the same date a resolution was adopted by the Council, requesting the Committee of Jurists, which had been appointed by the Council at its meeting on December 14, 1928, to consider the revision of the Statute of the Permanent Court of International Justice, to deal with this question as well as those with which it was already charged and to make any suggestions which it felt able to offer, with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It has been of the greatest assistance to the committee in the accomplishment of this additional task that among its members was to be found the Hon. Elihu Root, former Secretary of State of the United States, and one of the members of the committee which in 1920 framed the original draft of the Statute of the Court. His presence in the committee has enabled it to re-examine with good results the work accomplished by the special conference which was convoked by the Council in 1926, after the receipt of the letter of March 2 of that year from the then Secretary of State of the United States informing the Secretary-General of the League that the United States was disposed to adhere to the Protocol of December

[1] Reprinted from Document C. 142. M. 52. 1929. V. 4, p. 15. *Official Journal*, X, p. 1113.

16, 1920, on certain conditions enumerated in that letter. The United States did not see its way to participate, as it was invited to do, in the special conference of 1926, and, unfortunately, the proposals which emanated from that conference were found not to be acceptable to the United States. Nevertheless, as is shown by the note of February 19, 1929, from Mr. Kellogg, the margin of difference between the requirements of the United States and the recommendations made by the special conference to the powers which had signed the protocol of December 16, 1920, is not great. For this reason, the committee adopted as the basis of its discussions the preliminary draft of a protocol annexed to the Final Act of that conference, and has introduced into the text the changes which it believes to be necessary to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties. This revised text is now submitted to the Council of the League.

The discussions in the committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to the interests of the United States which might in certain cases be involved. Those discussions have also shown that the hesitation felt by the delegates to the conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure. The task of the committee has been to discover some method of insuring that neither on the one side nor on the other should these apprehensions prove to be well founded.

No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States, except in so far as they relate to advisory opinions, and the task of the committee would have been simplified if its members had felt able to recommend that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. The committee, however, is of opinion that it can not recommend any such drastic solution. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions

enabled parties to a dispute to ask for the submission of their difference to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit it in the form of international litigation.

The committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council or Assembly to ask for an advisory opinion from the Court must be unanimous.

As is pointed out in the Final Act of the special conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. All that is possible is to guarantee to the United States a position of equality in this matter with the states which are represented in the Council or the Assembly of the League.

Furthermore, mature reflection convinced the committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guaranties or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which such questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other.

It is this method which the committee recommends should be adopted, and to provide for which it now submits a ext of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America.

The note of February 19, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realizes the difficulties and responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering upon unreal or unsubstantial grounds the machinery by which advisory opinions are from time to time requested.

The committee is thereby enabled to recommend that the states which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set

out in the articles of the draft Protocol. This is the effect of Art. I of the draft now submitted.

The next three articles reproduce without substantial change the corresponding articles of the draft of 1926.

The fifth article provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to insure that an understanding will be reached and no conflict of views will remain.

The provisions of this article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members of that body separate. In that case, it will be for the Council to give such directions as the circumstances may require in order to insure that the intentions of the article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or may be dispatched with the request that the Court will nevertheless suspend action on the request until the exchange of views with the United States has been completed. The provisions of the article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of a request for an advisory opinion and has given notice of the request to the United States in the same way as it has to the other Governments, the proceedings may, if necessary, be interrupted in order that the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this article should in practice afford protection to all parties in all cases, but, if they do not, it must be recognized that the solution embodied in the present proposal will not have achieved the success that was hoped, and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph

of the article. It may be hoped that should any such withdrawal by the United States materialize, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the draft Protocol of 1926.

It is necessary to consider what steps will be required to bring the Protocol, of which the text is now submitted, into force in the event of the recommendations of the committee being accepted.

If the terms of the protocol are approved by the Council, it will be advisable that the Secretary General should be directed, when answering Secretary Kellogg's note of February 19, 1929, to communicate the draft to the Government of the United States. Since the Protocol, if approved, covers the entire ground of Secretary Kellogg's note, its transmission with a statement of the Council's approval would seem to constitute an adequate reply to that note. It should at the same time be communicated to all the states which signed the Protocol of December 16, 1920, together with a copy of the resolution of the Senate of the United States, dated January 27, 1926, containing the reservations of the United States.

It should also be communicated to the Assembly, in which the proposal for the appointment of this committee originated, in order that, if its terms are acceptable to that body, a resolution approving it may be passed by the Assembly in the course of its ensuing session. Any action taken by the Assembly should be communicated to the signatory states which are called upon to determine whether or not to sign the new Protocol now proposed.

If the replies from the various Governments indicate a desire for a further exchange of views in regard to the nature of the proposed arrangement with the United States or to the terms of the draft protocol, it will be for the Council to decide whether such exchange of views should proceed through the diplomatic channel or whether it is necessary to convoke a further special conference for the purpose, at which states not Members of the League might be represented. In any event, such exchange of views should, if possible, be completed before the conclusion of the Assembly, in order that the approval by the Assembly may be obtained in 1929. A copy of the Protocol in the terms approved will then be prepared for signature, and every effort should be made to secure that delegates to the meeting of the Assembly or of the special conference, if there should be one, should be authorized to sign the instrument, and should

actually sign it before they leave Geneva. The signature of representatives of states not Members of the League should be obtained at the same time.

As provided in Art. 7 of the draft, the protocol will come into force as soon as it has been ratified by the states which have ratified the Protocol of December 16, 1920, and by the United States, and, as soon as it comes into force, it will be possible for the United States to take the necessary steps to become a party to the Protocol of December 16, 1920, and to any further protocol which may have been concluded for introducing amendments into the Statute of the Court.

When that happy result has been achieved, it will be possible to feel that further progress has been made in establishing the reign of law among the nations of the world and in diminishing the risk that there may be a resort to force for the solution of their conflicts.

VI. ACTION OF THE COUNCIL OF THE LEAGUE OF NATIONS: REPORT AND RESOLUTION, JUNE 12, 1929 [1]

Referring to a letter from the Secretary of State of the United States of America, dated February 19, 1929, the Council of the League of Nations, on March 9 following, requested the Committee of Jurists mentioned in its resolutions of December 13 and 14, 1928, to make any suggestions which it felt able to offer with a view to facilitating the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

The Committee of Jurists, which sat from March 11–19, 1929, set forth in a report, to which is annexed a draft Protocol, the results of its study of the question. My colleagues have seen this report, which follows the Committee's report on the examination of the Statute of the Court in document C. 142. M. 52. 1929. The members of the Council will have found in the report, together with the proposals submitted, a statement of the grounds on which those proposals are based.

The procedure proposed by the committee seems to constitute the best means of realizing the end in view. The Jurists in their report have contemplated that:

> If the terms of the Protocol are approved by the Council, it will be advisable that the Secretary-General should be directed, when answering Mr. Kellogg's note of February 19, 1929, to communicate the draft to the Government of the United States. Since the Protocol, if approved, covers the entire ground of Mr. Kellogg's note, its transmission with a statement of the Council's approval would seem to constitute an adequate reply to that note. It should, at the same time, be communicated to all the States which signed the Protocol of December 16, 1920, together with a copy of the resolution of the Senate of the United States, dated January 27, 1926, containing the reservations of the United States.

As the Assembly is called upon to pronounce upon the matter at its next session, the procedure recommended gives the states which

[1] *Official Journal*, X, p. 997. (Document C. 275. 1929. V.)

are parties to the Court's Statute and the United States time to proceed in the interval to the necessary study of the question.

In view of what I have said, I have the honor to submit to the Council the following resolution: [1]

The Council adopts, together with the draft Protocol annexed thereto, the report submitted to it by the Committee of Jurists on the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

Accordingly, it instructs the Secretary-General:

1. To reply to Mr. Kellogg's note of February 19, 1929, and communicate to the United States Government, together with the present Council resolution, the text of the said report and of the said draft Protocol;

2. To make the same communication to the states signatories of the Protocol of December 16, 1920, and to transmit also to those states the text of the resolution of the Senate of the United States, dated January 27, 1926, embodying the latter's reservations.

In order that the Assembly, being, like the Council, a body whose procedure in regard to the method of seeking Advisory Opinions from the Court would be affected by the adoption of the Protocol proposed by the Committee of Jurists, may have an opportunity of expressing its opinion thereon, the Council decides to instruct the Secretary-General to transmit to the Assembly the report of the committee and the draft Protocol and to place the question on the supplementary agenda of the tenth ordinary session of the Assembly.

[1] This resolution was transmitted on the same day by the Secretary-General to the Secretary of State.

VII. ASSENT OF UNITED STATES GOVERNMENT

1. Aide Mémoire presented on August 14, 1929, by the American Minister at Bern to the Secretary-General of the League of Nations [1]

The Minister of the United States to Switzerland has been instructed to acknowledge in person the courtesy of the Secretary-General of the League of Nations in forwarding his informal note of May 2, 1929, [2] and his formal note from Madrid dated June 12, 1929, [3] the latter inclosing the Council's resolution of June 12, 1929, League Document C. 142. M. 52. 1929. V, containing the texts of the report of the Committee of Jurists adopted at their session in Geneva, March 11 to March 19, 1929, and the annexed draft protocol as mentioned in the resolution regarding the question of American accession to the protocol of organization of the statute of the Permanent Court of International Justice.

The minister has been instructed at the same time to inform the Secretary-General that after careful examination the Secretary of State considers that the said draft protocol would effectively meet the objections represented in the reservations of the United States Senate and would constitute a satisfactory basis for the adherence of the United States to the Protocol and Statute of the Permanent Court of International Justice dated December 16, 1920, and that after the draft protocol has been accepted by the states signatory to the Protocol of Signature and the Statute of the Permanent Court he will request the President of the United States for the requisite authority to sign and will recommend that it be submitted to the Senate for its consent to ratification.

2. Statement by the Secretary of State, September 5, 1929 [4]

I have carefully examined the draft protocol recommended by the Committee of Jurists last spring for the purpose of meeting the objections represented by the reservations of the United States

[1] Reprinted from Department of State release, September 5, 1929.

[2] *Ad interim* note not here reproduced.

[3] Not here reproduced.

[4] Reprinted from Department of State release.

Senate in regard to the entry of the United States into the World Court and I have satisfied myself that this draft protocol, if ratified by the other signatory powers, would meet the objections raised by the Senate and fully protect the United States against the dangers anticipated by the Senate. Accordingly, last month I notified the Secretary-General of the League of Nations, who is presenting this to the other signatory powers, that the draft protocol met with my approval and that if it was accepted by the other states I would recommend to the President of the United States that it be signed and submitted to the Senate for its consent to ratification.

VIII. REPORT OF THE FIRST COMMITTEE TO THE ASSEMBLY OF THE LEAGUE OF NATIONS[1]

Rapporteur: M. Politis (Greece)

After the resolution adopted by the Senate of the United States on January 27, 1926, with regard to the adherence of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16, 1920, a Conference of the Signatories of the said Protocol was held at Geneva in September, 1926, for the purpose of considering how effect might be given to the reservations and understandings embodied in the Senate resolution. The conference of 1926 prepared the draft of a protocol which it was believed would meet all the requirements of the situation, but unfortunately the Government of the United States, which had not been represented in the Conference, did not see its way to accept the protocol.

On February 19, 1929, the Government of the United States intimated by means of a note addressed to all the interested parties that an exchange of views might lead to an agreement with regard to the conditions upon which the United States desired to adhere to the Statute of the Court. Arrangements were accordingly made by the Council of the League that the Committee of Jurists which it had appointed in pursuance of the resolution of the Assembly dated September 20, 1928, on the subject of the examination of the Statute of the Court to see whether any amendments were necessary, should deal also with the question raised by the note from the United States Government and should make any suggestions which it felt able to offer with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It was of the greatest assistance to the Committee in the accomplishment of this additional task that among its members was to be found the Hon. Elihu Root, formerly Secretary of State of the United States, and one of the members of the committee which in 1920 framed the original draft of the Statute of the Court. His presence in the committee enabled it to re-examine with good

[1] Reprinted from A. 49. 1929. V. 15.

results the work accomplished by the Special Conference which met in 1926. The note from the United States Government to which reference is made above had shown that the margin of difference between the requirements of the United States and the recommendations made by the Special Conference was not great. For this reason, the Committee of Jurists adopted as the basis of its discussions the preliminary draft of a protocol which was annexed to the Final Act of that conference and introduced into it the changes which it believed were necessary in order to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties.

The revised draft protocol was submitted to the Council of the League and adopted by that body at its session at Madrid on June 12, 1929. It was placed on the agenda of the present session of the Assembly and also, in consequence of a resolution of the Council of August 31, 1929, upon that of the conference convened to consider the revision of the Court's Statute. This conference has now informed the Assembly that the text of the protocol has been approved by all the Governments represented in the conference and that there is every reason to believe that it will meet with unanimous acceptance. It is necessary, however, that the protocol should be formally approved by the Assembly of the League before it is opened for signature, as the agreement which it embodies will affect the right of the Assembly to ask for an advisory opinion from the Court.

No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States in the Senate resolution of January 27, 1926, except in so far as they relate to advisory opinions. A simple solution of these difficulties would have been found had it been possible to agree that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. So drastic a solution, however, is not at present feasible. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled the parties to a dispute to ask for the submission of their differences to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit them in the form of international litigation.

Another method by which satisfaction might easily have been given to the conditions laid down by the United States would

have been that of adopting a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As was pointed out in the Final Act of the special conference of 1926, it is not possible to say with certainty whether a decision by a majority is not sufficient. On this point, all that is possible is to guarantee to the United States a position of equality with the states which are represented in the Council or the Assembly of the League.

The investigation of the whole subject which was made by the Committee of Jurists showed that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to the interests of the United States, which might in certain cases be involved. Those discussions also showed that the hesitation felt by the delegates to the conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure.

The system of asking a judicial tribunal for advisory opinions is one which does not exist at all in the Constitution of the United States of America, and it is not unnatural that some misapprehension should be entertained in that country as to the rôle which the Permanent Court of International Justice fulfils in giving advisory opinions on questions submitted to it by the Council or the Assembly of the League. The procedure followed by the Court in dealing with the questions submitted to it for an advisory opinion is in fact almost identical with the procedure which is followed in dealing with contentious cases.

Misapprehension appears also to exist in the United States as to the powers of the Council to give effect to the opinions rendered by the Court on questions submitted to it by the Council or the Assembly. It has, for instance, been suggested that the provisions of the concluding paragraph of Art. 13[1] of the Covenant would

[1] The article relates to settlement of disputes between Members of the League by arbitration or judicial methods. The concluding paragraph reads:

"4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto."

enable the Council to oblige the Members of the League to resort to war for the purpose of enforcing such an opinion.

This view is erroneous. The last paragraph of Art. 13 relates only to awards or decisions, not to advisory opinions. Advisory opinions are given by the Court at the request only of the Council or the Assembly of the League and in general only for the purpose of guiding the organs of the League or the International Labor Office in questions which come before those bodies in the execution of their duties. They are opinions only and in theory are not binding. Even in cases where an advisory opinion was asked for by the Council or the Assembly at the request of individual States which preferred to submit their disputes to judicial settlement through the machinery of an advisory opinion rather than by direct submission to the Court, the powers of the Council would not go beyond its general duty of securing respect for treaty engagements by insuring that parties which submit their dispute for decision by a tribunal shall execute in good faith the decision which may be rendered. The power of the Council under Art. 13, par. 4, in connection with awards or judicial decisions, is limited to "*proposing*" measures for the purpose of giving effect to them. It can not do more. It certainly could not oblige states to take measures which would violate their treaty engagements.

The discussions which took place in the Committee of Jurists showed that it was useless to attempt to allay the apprehensions on either side referred to above by the elaboration of any system of paper guarantees or abstract formulae. The only satisfactory method would be to deal with the problem in a concrete form, to provide some method by which the parties might be brought into contact so that questions as they arise might be examined and views exchanged and a conclusion thereby reached after each side had made itself acquainted with the difficulties and responsibilities which beset the other. This is the method which the committee recommended should be adopted and to provide for which it submitted the text of a protocol to be concluded between the states which signed the Protocol of 1920 and the United States of America. This view has been endorsed by the Conference which has recently concluded its labors, and the First Committee now recommends that it should be adopted by the Assembly.

The note of February 19, 1929, from the United States had made it clear that that Government has no desire to interfere with the work of the Council or the Assembly of the League and that there is no intention on the part of that Government to hamper, upon

unreal or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. This rendered it possible for the committee to recommend that the states which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft protocol which the committee prepared and which is now annexed to this report.[1] The important article is No. 5, which provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. It may be expected that the exchange of views so provided for will be sufficient to insure that an understanding will be reached and no conflict of views will remain.

The provisions of this article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members of that body separate. In that case, it will be for the Council to give such directions as the circumstances may require, in order to insure that the intentions of the article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or it may be dispatched with a request that the Court will nevertheless suspend action on the request until the exchange of views with the United States has been completed. The provisions of the article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of the request for an advisory opinion and has given notice of the request to the United States in the same way as to the other Governments, the proceedings may, if necessary, be interrupted in order that the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this article should in practice afford protection to all parties in all cases; but, if they do not, it must be recognized

[1] This document in its completed form is No. IX, following.

that the solution embodied in the present proposal will not have achieved the success that was hoped for and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph of the article. It may be hoped that, should any such withdrawal by the United States materialize, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

In order to insure so far as possible that the parties to the Protocol of 1920 shall be identical with the parties to the new Protocol, Art. 6 provides that any State which in future signs the Protocol of 1920 shall be deemed to accept the new Protocol.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the Draft Protocol of 1926.

For these reasons the First Committee submits the following resolution to the Assembly:

"The Assembly adopts the draft Protocol relating to the adherence of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice."

It is understood that, if this resolution is adopted by the Assembly, the Secretary-General will proceed forthwith to open the Protocol for signature.

IX. PROTOCOL REGARDING THE ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE OPENED FOR SIGNATURE AT GENEVA, SEPTEMBER 14, 1929[1]

The states signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16, 1920, and the United States of America, through the undersigned duly authorized representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol, subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27, 1926.

ART. 1. The states signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following articles.

ART. 2. The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory states Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

ART. 3. No amendment of the Statute of the Court may be made without the consent of all the contracting states.

ART. 4. The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Arts. 73 and 74 of the Rules of Court.

ART. 5. With a view to insuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any

[1] Reprint from the certified copy in League Document C. 493. M. 157. 1929. V. The text is identically that drawn up by the Committee of Jurists, March 18, 1929. The Council of the League submitted it to the Conference of Signatory States held September 4–12, which adopted it without change, as did the Assembly on September 14.

proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or the Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Art. 73 of the Rules of Court, stating a reasonable time limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded, and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in pars. 1 and 2 of this article, it shall appear that no agreement can be reached and the United States is not prepared to forego its objection, the exercise of the powers of withdrawal provided for in Art. 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to cooperate generally for peace and good will.

ART. 6. Subject to the provisions of Art. 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

ART. 7. The present Protocol shall be ratified. Each state shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory states. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all states which have ratified the Protocol of December 16, 1920, and also the United States, have deposited their ratifications.

ART. 8. The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16, 1920. The Secretary-General shall immediately communicate this notification to all the other states signatories of the Protocol.

In such case the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other contracting states may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16, 1920. The Secretary-General shall immediately give communication of this notification to each of the states signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the contracting states other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

Done at Geneva, the fourteenth day of September, nineteen hundred and twenty-nine, in a single copy, of which the French and English texts shall both be authoritative.

[Up to October 1, 1929, the Protocol had been signed on behalf of the following states:

Australia
Austria
Belgium
Bolivia
Brazil
Bulgaria
Canada
Chile
China
Colombia
Cuba
Czechoslovakia
Denmark
Dominican Republic
Estonia
Finland
France
Germany
Great Britain and Northern Ireland and all Parts of the British Empire not separate Members of the League of Nations
Greece
Guatemala
Haiti
Hungary
India
Irish Free State
Italy
Japan
Latvia
Liberia
Luxemburg
Netherlands
New Zealand
Nicaragua

Norway
Panama
Paraguay
Persia
Peru
Poland
Portugal
Rumania
Salvador
Serb-Croat-Slovene State
Siam
South Africa, Union of
Spain
Sweden
Switzerland
Uruguay
Venezuela]

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